federal register

THURSDAY, MAY 3, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 85

PART II

# DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

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## MILK IN THE LAKE MEAD MARKETING AREA

### Proposed Rules

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### [ 7 CFR Part 1139 ]

[Docket No. AO374]

### MILK IN THE LAKE MEAD MOUNTAIN AREA

### Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

Notice is hereby given of the filing with the hearing clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of milk in the Lake Mead marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, on or before May 11, 1973. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

*Preliminary statement.*—The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at St. George, Utah, October 17–19, 1972, pursuant to notice thereof which was issued September 27, 1972 (37 FR 20563).

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for the issuance of a milk marketing agreement or order which will tend to effectuate the policy of the act; and

3. What the order provisions should be with respect to:

(a) The scope of regulation;

(b) The classification and allocation of milk;

(c) The determination and level of class prices;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

*Findings and conclusions.*—The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commerce.*—The handling of milk in the marketing area adopted herein is the current of interstate commerce and directly burdens, obstructs, and affects interstate commerce in milk and milk products.

The marketing area defined in the proposed order, hereinafter referred to as the "Lake Mead marketing area," includes part of Clark County in southern Nevada and two communities in southern Utah (St. George and Cedar City). Most of the population of the area is centered in the Las Vegas metropolitan area.

Milk marketing in southern Nevada is regulated by the Nevada Dairy Commission. The handlers located there, principally at Las Vegas, are supplied by about 15 dairy farmers whose farms are in southern Nevada. About 40 percent of the milk processed by the southern Nevada handlers is not classified and priced by the Commission.

Milk production in southern Nevada is not sufficient to meet the handlers' needs for bottling use and for cottage cheese and ice cream sales. An increasing quantity of milk and dairy products originates outside Nevada.

The milk supply originating in Nevada was supplemented with 41 million pounds of milk from outside the State in 1969, 43 million pounds in 1970, and 48 million pounds in 1971. A substantial portion of the total milk processed by southern Nevada handlers originates from 28 producers whose farms are in southern Utah. Milk from some of these producers is received at a processing plant at Cedar City, Utah, which plant also distributes fluid milk products in the southern Nevada area. The remainder is received at Nevada plants where it is commingled with milk from Nevada farms in processing operations.

Safeway Stores, Inc., markets fluid milk and milk products in southern Nevada from its plant at Los Angeles, Calif., utilizing raw milk produced in Nevada and California. Also, the firm markets milk products in southern Utah utilizing raw milk associated with the Great Basin Federal order, which milk originates in Utah, Wyoming, northeastern Nevada, and Idaho. Lucky Stores, Inc., serves southern Nevada with fluid milk and milk products from its plant in California utilizing raw milk produced in California.

In addition to the regular and substantial flow of fluid milk and milk products in interstate commerce in both packaged and bulk form, there is a regular movement of manufactured dairy products into the marketing area. No butter, hard cheese, or nonfat dry milk is manufactured by southern Nevada plants or by the plant at Cedar City, Utah. These products are supplied from other sources, normally from outside Nevada. Also, milk that is excess to the market's needs is, at times, disposed of to plants located outside the State of Nevada where it is processed into milk products.

2. *Need for an order.*—There is general agreement among producer groups in the market that marketing conditions in the area are such that an overall system of classification, pricing, and accounting for milk should be adopted to restore stability, and that for such a system to be effective it must be established under Federal authority.

No testimony was presented at the hearing in opposition to such regulation.

There are three cooperative associations seeking Federal milk regulation in the Lake Mead area. Clark County Dairymen, Inc., is a farmer cooperative. The association does not operate processing facilities, and its members produce milk and market it primarily through Arden Farms, Las Vegas, a proprietary distributor.

General Dairies, Inc., is a farmer cooperative. It has processing facilities in both the States of Utah and Nevada. The plant of General Dairies, Inc., at Cedar City processes considerable quantities of milk that are distributed in the Cedar City, St. George (Utah), and Las Vegas areas. Milk processed at the Cedar City plant is received from farms located in both Utah and Nevada.

Vegas Valley Farms is a corporation organized under the laws of the State of Nevada and owned by General Dairies, Inc. It has a fluid milk processing facility at Logandale, Nev., and a distribution facility in Las Vegas. Milk processed at the Logandale plant is received from producers located in Utah and Nevada.

Alamo Dairymen Association is a farmer cooperative. It has no fluid milk processing facility and its producers market their milk to General Dairies, Inc., for such processing at its Cedar City plant.

The proponents represent 38 of the 43 producers who produce milk in southern Utah and southern Nevada. The five producers who were not represented by proponents are two producers for the St. George Ice Co., at St. George, and three producers who market their milk with Anderson Dairy, Las Vegas.

The problem on which the need for an order is based is that the State of Nevada cannot enforce its classified pricing program on milk produced outside Nevada. Since a substantial amount of milk for the market originates in Utah, the prices established by the Nevada Dairy Commission are not applicable to it. Thus, the milk produced in southern Utah and processed in southern Nevada plants is not subject to regulation by the Commission. Yet, milk produced in southern Nevada and that produced in southern Utah compete for the same market.

The largest handler serving the Las Vegas area receives milk from his own farm and from 18 other producers. Of these, 15 reside in southern Utah. Since the handling of milk produced in southern Utah is not subject to regulation by the Nevada Dairy Commission, the handler can, and does, buy milk from Utah producers at prices substantially lower than those established by the Commission. By so doing he enjoys a raw milk cost advantage over competition that

buys milk fully subject to the regulations of the Nevada Dairy Commission.

The handler buys milk from Utah producers on the basis of 80 percent Class I and 20 percent Class II utilization. A producer spokesman from Washington County, Utah, testified that this ratio has been used to pay him and other Utah producers for the past several years, irrespective of the actual utilization of milk.

Data published by the Nevada State Dairy Commission indicated that Nevada milk production for the Southern Nevada marketing area totaled 52.5 million pounds for the year of 1971. Of this total 46.8 million pounds (89 percent) was used in Class I. During 1970, 89 percent of the 54.9 million pounds of Nevada milk production for the market was used in Class I.

The Utah producer witness testified that he received a blend price (before deductions) of $5.65 per cwt for milk testing 3.5 percent butterfat for his July 1972 milk deliveries. If such milk had been subject to the Nevada State Dairy Commission prices, his "blend" price would have been 42 cents higher at $6.07 for such month.

From the foregoing price and utilization data, it is concluded that there is no overall plan whereby all dairy farmers who supply milk for distribution in the Lake Mead area are assured of payment for their milk in accordance with its use and at prices that are uniformly applicable throughout the market.

The problems of unstable marketing conditions encountered by producers in the Lake Mead marketing area are not unlike those in other fluid milk markets where there had been, prior to Federal regulation, no program for regulating all producer milk supplies on uniform terms. The present unstable marketing conditions in southern Nevada and southern Utah could threaten the maintenance of an adequate supply of milk for the Lake Mead marketing area. A Federal milk order establishing class prices at reasonable levels and a marketwide pool for distributing returns uniformly among all producers will provide the needed market stability. Price stability and orderly marketing throughout the entire Lake Mead marketing area depend on the adoption of a classified pricing plan based on audited utilization of all Grade A milk purchased by handlers from producers and an equitable division among all producers of the proceeds from the sale of their milk.

Both the southern Utah producers and the southern Nevada producers will be assured of reasonable minimum prices applicable to the respective class-uses provided herein. A Federal milk order will assure them that all their milk will be priced according to its use and that each producer will share pro rata in the returns from the sale of their milk in the respective classes.

Handlers will be assured that their competitors will pay for milk at not less than the minimum prices set by the order and that such prices will apply whether the milk originates in southern Utah or southern Nevada.

Also, a Federal milk order should help prevent wide fluctuations in prices through seasonal periods of heavy and light milk production and thus, by providing increased assurance to producers concerning their market, help to assure consumers in the Lake Mead marketing area of an adequate supply of milk throughout the year.

Moreover, there is now a lack of detailed marketing information relative to the procurement and disposition of milk throughout the Lake Mead area. Such information is essential to orderly marketing on a continuing basis. A Federal milk order for the Lake Mead area will provide further benefit of complete information on receipts and utilization of milk.

In addition, the procedures required by the act will afford all interested persons opportunity to take part in determining, through public hearing, what the various provisions of the order should be to insure the orderly marketing of milk on a continuing basis.

3. *The Lake Mead order provisions.*— (a) *The scope of regulation.*— It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specific definitions to describe: (1) The marketing area; (2) route disposition; (3) the types of plants; (4) the various categories of regulated persons (handlers); and (5) the persons (producers) whose milk will be subject to the uniform prices.

*Marketing area.*—The Lake Mead marketing area should include the urbanized territory within Clark County, Nev. (including Nellis Air Force Base), and the territory within the municipal limits of Cedar City and St. George, Utah.

The urbanized territory of Clark County includes the following incorporated and unincorporated places: Henderson City in Henderson Township; East Las Vegas, Las Vegas City, Paradise, Sunrise Manor (part), Vegas Creek, and Winchester in Las Vegas Township; Boulder City, in Nelson Township; and Nellis, North Las Vegas City, and Sunrise Manor (part) in North Las Vegas Township.

The urbanized area in Clark County and the cities of Cedar City and St. George, Utah, have experienced considerable population growth over the past 10 years. The Las Vegas urbanized area population increased 156 percent from 1960 to 1970. Over the same 10-year period, the population of St. George, Utah, increased 38 percent, while the population of Cedar City increased 19 percent.

The 1970 census population of the proposed Lake Mead marketing area was 270,928. Of this total 254,885 or 94.1 percent resided in the Las Vegas urban area.

Proponents proposed that all of Clark County, Nev., be included in the marketing area. However, the county comprises 7,874 square miles while the urbanized population is situated in a relatively compact area surrounding Las Vegas. The 1970 population of Clark County was 273,288 and the population of the Nevada portion of the marketing area proposed herein was 93.3 percent of the total population of Clark County. Handler competition for fluid sales is concentrated in the heavily populated area, and the Nellis Air Force Base. With a very large proportion of the total population residing in a relatively compact area, it is concluded that all of Clark County need not be included in the marketing area, as producers proposed.

The 1970 census data for Iron County, Utah, indicate a population of 12,177. About 74 percent resided in Cedar City. The remainder of the population for the county is rural. A similar situation exists concerning Washington County, Utah. The 1970 census data indicates a population of 13,669 for Washington County. About 52 percent resided in the city of St. George. The remainder of the Washington County population is rural. With a significant proportion of the population in Iron and Washington counties residing within the municipal limits of Cedar City and St. George, competition among handlers for fluid sales is concentrated in such areas. Accordingly, the marketing area should be limited to the municipal limits of the two cities rather than expanded to include the entire two-county area.

The major handlers who distribute milk in the defined marketing area are Anderson Dairy, Las Vegas; Arden Farms, Las Vegas; Vegas Valley Farms, Logandale, Nev.; Safeway Stores, Oakland, Calif.; Lucky Stores, Bueno Park, Calif.; St. George Ice Co., St. George, and General Dairies, Cedar City.

A significant amount of milk processed at the Cedar City plant is distributed in Las Vegas, while the major portion of the fluid disposition from the St. George plant is made in the vicinity of that city.

The Cedar City plant would be fully regulated by the Lake Mead order regardless of whether the cities of St. George and Cedar City are included in the marketing area because of its route disposition in Clark County. However, if both cities were not included, the plant located at St. George would not be regulated. As a result, about 50 percent of the sales from the Cedar City plant would be disposed of as route disposition in competition with an unregulated plant located close by at St. George.

Grade A milk products sold for fluid consumption throughout the defined marketing area must be approved by duly constituted regulatory agencies who are governed by health ordinances, practices, and procedures patterned after the U.S. Public Health Service Grade A Pasteurized milk ordinance. Also, the States of Nevada and Utah have reciprocal agreements with respect to the interstate movement of milk from handler facilities approved and operated under the U.S. Public Health Service Interstate Milk Shippers Code. Because of such reciprocal approval of responsible regulatory agencies, there generally is free and un-

restricted movement of Grade A milk both in bulk and packaged form among various locations in the market.

The order also should provide that governmental establishments located wholly or partly within the boundaries of the designated marketing area can be considered as part of the marketing area. If such governmental establishments are located partly within and partly outside the designated boundary, the entire establishment shall be a part of the marketing area. The point of delivery within any such installation should not be the factor in determining whether a handler is subject to the order. Therefore, all territory occupied by a governmental establishment shall be a part of the marketing area if any part of such territory lies geographically within the designated boundaries of the marketing area.

It is concluded that the marketing area proposed herein should result in effective regulation of the principal handlers who compete for sales in the Las Vegas area, and throughout southern Utah, without bringing under regulation plants having minimal sales within the marketing area.

All producer milk received at plants to be regulated must be made subject to classified pricing under the order regardless of whether it is disposed of within or outside the marketing area. Otherwise the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" sales were subject to classification, pricing, and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he may choose to his outside sales. He thereby could reduce the average cost of all his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. Unless all milk of such a handler were fully regulated under the order, he in effect would not be subject to effective price regulation.

The absence of effective classification, pricing, and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market. It is essential, therefore, that the order price all producer milk received at a pool plant regardless of the point of disposition.

*Route disposition.*—The term "route disposition" should mean a delivery to a retail or wholesale outlet (except to another plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine), of a fluid milk product classified as Class I.

Fluid milk products are sometimes moved from a milk plant to a facility such as a warehouse, loading station, storage plant, or other transfer point on the way to a wholesale or retail outlet. The distribution from such point would be considered as a continuation of a route from a milk plant. To do otherwise would be inappropriate because it would consider the disposition of fluid milk products to have been made at the temporary storage facility instead of at the location which such products are received by retail and wholesale purchasers.

*Definitions of plants.*—Essential to the operation of a marketwide pool is the establishment of minimum performance standards to distinguish between those plants substantially engaged in serving the fluid needs of the market and those plants that do not serve the market in a way, or to a degree, that warrants their sharing (by being included in the market pool) in the market average utilization of Class I milk.

Such distinction is necessary; otherwise, the proceeds of the higher Class I price would be dissipated by including in the market pool additional quantities of milk acquired by handlers primarily for manufacturing purposes. Such proceeds could accrue in part to the benefit of dairy farmers supplying milk to handlers who do not furnish the fluid milk needs of the market on a regular, dependable basis. Unless adequate standards of marketing performance are provided to determine which milk and plants should participate fully in the market pool funds, the uniform price of the market could be depressed to the point that it would not serve its function of attracting a dependable supply of milk sufficient for the fluid needs of the market without a Class I price higher than otherwise would be necessary.

Delivery performance should be the measure of whether a plant is sufficiently identified with the market to be fully subject to the pricing and pooling provisions of the order. Of necessity, it must apply uniformly to all plants. The standards for pool participation are discussed later in this decision in connection with the definition of a pool plant.

Regardless of its location, any plant should have equal opportunity to comply with the standards of performance and have their producers share in the available Class I sales. Whether the plants and producers choose to supply the market will depend on the economic circumstances with which they are confronted, such as prices, transportation costs, and alternative outlets.

Because of the difference in marketing functions between distributing plants and supply plants, separate performance standards are provided.

A "distributing plant" is defined herein as a plant in which milk approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and from which there is route disposition in the marketing area during the month.

A "supply plant" is defined herein as a plant from which fluid milk products acceptable to a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

*Pool plants.*—To qualify as a pool plant, a distributing plant would be required to meet performance standards both as to the proportion of its receipts used in route disposition, and its route disposition in the marketing area.

Pool distributing plants would include only plants having as a primary function the route disposition of fluid milk products. The plant's total route disposition, both inside and outside the marketing area, must be at least 50 percent of its receipts of Grade A fluid milk products from all sources and producer milk diverted to nonpool plants. In addition, the plant's route disposition in the marketing area must be at least 10 percent of such receipts.

It is expected that under normal circumstances any plant distributing Class I milk in the marketing area on a regular basis would exceed by a comfortable margin the minimum performance standards for pooling.

Three plants located in the bordering States of California and Utah have some route disposition in the Lake Mead marketing area. Two of the plants are subject to regulation under the California Bureau of Milk Stabilization and the other one is regulated under the Great Basin Federal order. The hearing did not provide reasons to expect that these plants will meet the 10 percent in-area route disposition requirement for pooling under the Lake Mead order. There may be other such plants in the future. All plants, not subject to the pricing and pooling provisions of another Federal order with route disposition in the marketing area should be required, however, to file reports and make available their records for audit by the market administrator as a basis of determining their status under the pooling requirements.

A proprietary handler representative proposed that the minimum in-area route disposition to qualify a distributing plant for pooling be 15 percent of receipts of Grade A milk, including producer milk diverted. The handler witness contended that the minimum in-area route disposition requirement proposed by producers be raised so that a plant located in Los Angeles definitely would not qualify as a pool plant. The witness stated that about 8 percent of the receipts at the Los Angeles plant is distributed in the southern Nevada area. The witness indicated further that such plant anticipates expanded sales in the southern Nevada area in the near future.

The operation of the pool is an essential feature of the regulation, which is designed to maintain orderly marketing, since it is the mechanism through which producers enjoy the benefits of the Class I sales value and also share equitably in the burden of any lower-valued surplus disposition.

We conclude that the interests of the producers are served best when the maximum proportion of milk regularly supplied to the market is regulated on such terms. The provision provided herein will accomplish this and at the same

time will permit exemption from pooling milk at a plant that might only incidently, or perhaps accidentally, become involved in distribution within the marketing area.

As a general proposition any percentage higher than 10 percent would make possible a higher incidence of exemption from regulation for distributing plants. In the particular instance cited, the California plant has a large volume of fluid milk disposition, and 15 percent of such plant's volume would represent a substantial portion of the Lake Mead market. We find no basis in this proceeding to warrant adoption of a provision that would tend to reduce the proportion of that milk pooled.

The in-area route disposition standard for pooling would not restrict, however, any milk plant operator from disposing of fluid milk products in the marketing area. On the other hand, the operator of any plant only marginally associated with the market has a reasonable opportunity to make a choice of full or partial regulation, whichever might better serve his interest.

The further appropriate criterion for a pool distributing plant is that plant utilization be basically for fluid disposition. The definition provided herein specifies that 50 percent or more of the Grade A receipts received by the distributing plant must be disposed of on routes (in or out of the marketing area) as fluid milk products (except filled milk).

"Supply plant" is the other plant category for which standards for pooling must be provided. A supply plant would be a plant from which a fluid milk product acceptable to a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

To qualify as a pool plant, a supply plant would have to transfer to pool distributing plants in the form of fluid milk products at least 50 percent of its Grade A milk receipts from dairy farmers. A plant thus transferring the major portion of its receipts from dairy farmers to regulated distributing plants makes a substantial contribution towards providing an adequate supply for the market and hence may reasonably be considered as an integral part of the fluid milk supply for the market.

A supply plant from which a proportionately lesser quantity of milk than herein provided is transferred to pool distributing plants without otherwise having established a continuing association with the market should not, under present conditions, be considered as contributing sufficiently to the market supply to share in the pool funds.

At the hearing, a witness for proponent cooperatives stated that there is no plant currently serving the Lake Mead market that would qualify as a supply plant. Perhaps supply plants will become associated with the market in the future. Accordingly, provision should be made for such a supply plant to participate in the pool if the performance standards are met.

The demand for supply plant milk may vary seasonally and normally would be greatest during the season of lower production. Requiring qualifying transfers to pool distributing plants during flush production months would result in the uneconomic movement of milk. During such months it would be appropriate to leave the more distant milk for manufacture in the distant area if not needed, and to use the nearer supplies for Class I. For this reason, the supply plant pooling standard should not require that milk be transferred to pool distributing plants in the flush production months solely for the purpose of maintaining the pool eligibliity of a supply plant.

Therefore, a supply plant that was a pool plant in each of the immediately preceding months of August through February would be a pool plant for the months of March through July irrespective of its transfers to pool distributing plants, unless the operator of such a plant elects nonpool status for the plant.

Providing pooling status to a supply plant in March through July on the basis of transfers in the preceding August–February period will provide continuing producer status to dairy farmers who are recognized as milk suppliers of the market. However, a plant should be permitted to withdraw from pool status at the operator's option in any of the months of March through July in which it has not otherwise qualified as a pool plant. A plant withdrawn from pool plant status should not be reinstated, however, for any subsequent month of March through July unless it meets the shipping percentage for such month. In these circumstances it should be treated no differently than any other supply plant associating with the market for the first time.

The standards provided herein for pooling supply plants are deemed to provide a reasonable and appropriate measure as to whether a plant is sufficiently identified with the Lake Mead market without, at the same time, excluding from pool participation handlers whose plants have been a regular and dependable source of fluid milk supply for the market.

Limited quantities (as provided in the attached order) of Class I milk may be sold within the regulated marketing area from plants not regulated under any Federal order. It is concluded that in present circumstances the application of "partial" regulation to plants having less association than required for marketwide pooling will not jeopardize marketing conditions within the regulated marketing area. Official notice was taken at the hearing of the Assistant Secretary's June 19, 1964, decision (29 FR 9002) supporting amendments to 76 orders, in which the matter of partial regulation was discussed. The findings of that decision, as they relate to an unregulated plant have some Class I distribution in a marketing area, are appropriate for the designated marketing area and the decision is adopted in its entirety as is set forth herein.

The operator of a partially regulated plant would be afforded the options of: (1) Paying a compensatory charge with respect to route disposition in the marketing area; (2) purchasing at the Class I price under any Federal order sufficient Class I milk to cover his route disposition within the marketing area; or (3) paying his dairy farmers not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order (the latter representing an amount equal to the order obligation for milk which is imposed on fully regulated handlers).

While all fluid milk sales of the partially regulated plant would not necessarily be priced on the same basis as fully regulated milk, the provisions described are, however, adequate under most circumstances to prevent sales of milk not fully regulated (pooled) from adversely affecting the operation of the order. They should be adopted in this order to complement the pooling standards for fully regulated plants adopted herein.

The order provides further that a distributing plant from which an average of less than 300 pounds of Class I milk per day, except filled milk, is disposed of in the marketing area shall be an "exempt distributing plant." There are some "jugging" operations in southern Utah. Such operations were described as being very small, and having only a "de minimus" impact in the competition for fluid milk sales. It would not promote efficient administration of the order to apply the order provisions to distributing operations that are competitively inconsequential. It is concluded that exempting such operations will not contribute significantly to disorderly marketing.

The pool plant provisions adopted herein specify that the definition of "pool plant" shall not include a producer-handler's plant or an "exempt distributing plant." Neither should it include a distributing plant or a supply plant that is subject to regulation by another order. The provisions provided herein include a reasonable means of determining the order under which a distributing plant or a supply plant should be regulated when it meets the pooling qualifications of more than one order.

The pool plant definition should not apply to a distributing plant that also meets the pooling requirements of another Federal order and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant were subject to all the provisions of the Lake Mead order in the immediately preceding month, it would continue to be subject to all the provisions of the order until the third month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions provided

herein it is regulated under such other order.

The provision is aimed at limiting the casual, disruptive shifting between orders on a month-by-month basis that can occur when intermarket route disposition results in qualifying a distributing plant for pooling under more than one order. While this is not expected to be a problem for the Lake Mead market in the foreseeable future, it is appropriate, at the outset of regulation, to make such provision in the order.

It is possible that a supply plant qualified for pooling under the Lake Mead order could qualify as a pool supply plant under another Federal order in the same month. While no specific proposal was made with respect to this issue, the order should provide for such a situation if it occurs. The order provides herein that such a plant be regulated by the order under which it makes the greater qualifying shipments, unless the milk goes for surplus disposal only and the plant elects to retain its automatic pool status under the Lake Mead order during the March through July period.

In computing whether a plant has met the applicable pooling percentages, the receipts and disposition of filled milk should be excluded. A detailed discussion of the need and basis for making certain provision for the disposition of filled milk under an order is contained in a decision issued by the Assistant Secretary on October 13, 1969 (34 FR 16881). It is made a part hereof by reference as the basis for adopting the same provisions in the Lake Mead order.

*Nonpool plant.*—A definition of "nonpool plant" is provided to facilitate formulation of the various order provisions as they apply to certain plants. A nonpool plant would mean a plant other than a pool plant that receives milk from dairy farmers or is a milk manufacturing, processing, or bottling plant. Specific categories of nonpool plants would be defined as follows:

(1) "Other order plant" is a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the act;

(2) "Producer-handler plant" is a plant operated by a producer-handler as defined in any order (including this order) issued pursuant to the act;

(3) "Partially regulated distributing plant" is a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant or an exempt distributing plant;

(4) "Unregulated supply plant" is a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant; and

(5) "Exempt distributing plant" means a distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of in the marketing area during the month.

*Handler.*—The primary impact of an order is on handlers. A handler definition is necessary to identify those individuals from whom the market administrator must receive reports, and who have financial responsibility for payment of milk in accordance with order terms. As herein provided, the definition includes: (a) A person operating pool plants; (b) a cooperative association with respect to producer milk diverted for its account from a pool plant to a nonpool plant; (c) a cooperative association with respect to milk delivered from the farm to a pool plant in a tank truck under its control; (d) a person operating a partially regulated distributing plant; (e) a producer-handler; (f) a person in his capacity as the operator of an other order plant; (g) the operator of an unregulated supply plant, and (h) the operator of an exempt distributing plant.

To facilitate the diversion of milk to nonpool plants, a cooperative association is accorded handler status for milk it causes to be so diverted on its account from any pool plant to a nonpool plant.

A cooperative would be the handler also for any milk delivered from the farm to a pool plant in bulk in a tank truck owned and operated by, or under contract to, the cooperative association. Providing so will add flexibility to a cooperative's operations in allocating milk marketed by it to handlers. In this connection, the order recognizes in this and other relevant provisions that a cooperative association may, under the Capper-Volstead Act, market the milk of some producers who are not members of the association.

Producers proposed that a cooperative association be permitted to elect to be the handler on such farm bulk tank milk. Once milk from a producer has been commingled with milk of other producers in a tank truck, there is no further opportunity to measure, sample, or reject the milk of any individual producer whose milk is included in the load. A similar situation prevails when the milk of an individual producer is delivered in a tank truck to two or more plants. The operator of a pool plant to which bulk tank milk is delivered has an opportunity to determine only the weight and butterfat test of the total load.

If a tank truck picking up milk at the farm is operated under the supervision of a cooperative association, it is the association that determines the weight and butterfat content of each producer's milk. Handlers have no control and generally take no part in determining the weight and butterfat test of milk at the farm. In some instances, handlers may not even know from which farms their milk supplies are shipped. Accordingly, the order should provide that the cooperative be the handler on such milk.

The milk delivered by the cooperative as a bulk tank handler would be considered as a receipt of producer milk by the operator of the pool plant at which it was actually received. The pool plant operator's obligation for such milk to the producer-settlement fund, to the administrative fund, and to the cooperative association would be computed the same on such milk as for producer milk received directly from the farm of an individual producer.

Differences between the quantities of producer milk determined at the farm and ascertained as actually received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative association handler at the location of the plant where the milk is actually received. For such differences the cooperative (instead of the pool plant operator) would be required to settle with the producer-settlement and administrative funds.

*Producer-handler.*—The term "producer-handler" should apply to any person who produces his own milk and operates a distributing plant from which there is route disposition in the marketing area. Also, for designation as a producer-handler, such person may not receive or acquire for distribution milk products from any source other than receipts by transfer from pool plants or other order plants within the limits prescribed herein.

When a person operates a dairy farm and a fluid milk processing business it has not been necessary under Federal orders to require him to account for milk so produced at a particular minimum price. The producer-handler assumes the burden of maintaining the necessary reserve supply of milk associated with his fluid milk operation and of disposing of any daily or seasonal surpluses he may produce.

Experience under Federal orders generally has demonstrated that effective regulation of the market has been insured without direct involvement of persons who produce, process, and distribute essentially milk of their own production and who buy no milk from other dairy farmers or from other sources except as provided in the order. Persons who assume a dual role of producer and handler and who must carry their own balancing supplies have no demonstrable advantage either as a producer or a handler.

Under the order provided herein a producer-handler is not permitted to supplement his own production with receipts from other producers. To permit a producer-handler to supplement his own production with receipts from other producers whenever his fluid milk sales exceed his own production would result in the pool producers bearing the burden of the surplus associated with such milk.

Neither is a producer-handler permitted to bottle milk for another producer-handler. Were this to happen both producer-handlers automatically would lose such status. The receipt of milk at the bottling plant would be considered a receipt from a producer and the milk packaged and sold would be considered as sold by a handler.

As long as he retains his exempt status, the only obligation imposed on a producer-handler by the order is to file reports with the market administrator and to permit their verification. The purpose of such reports is to permit the market administrator to verify that the operation continues to be one of a bona fide producer-handler. Such reports are nec-

essary regardless of the size of the producer-handler operation.

Under the order contained herein, a producer-handler is expected to provide milk for his processing operation from his own farm production. However, he is permitted to buy fluid milk products from pool plants or other order plants during the month in an amount that does not exceed the lesser of 5 percent of his Class I utilization or 5,000 pounds. This limit is aimed at assuring that a producer-handler does not rely on the pool to balance the variation in his own production.

The provisions herein do not preclude a producer-handler from receiving and distributing nonfluid milk products such as butter, cheese, and ice cream which may be purchased from other sources. They would, however, prevent him from reconstituting nonfat dry milk for use as skim milk as beverages of any sort, including filled milk. An exception to this is that a producer-handler may use nonfat dry milk or other concentrates to increase the nonfat milk solids content of his fluid milk.

Receipts of milk at a pool plant from producer-handlers should be considered as other source milk. Otherwise, producer-handlers who do not share their own Class I sales by pooling would share in the Class I sales accruing to producers in the market. At the same time the producer-handler would not be bearing his proper share of the lower-valued reserve supplies associated with his Class I sales.

Various business arrangements, including superficial association with the milk production operation, may be used to acquire an appearance of true producer-handler operation. To preclude the use of such devices the order should provide that the producer-handler shall provide the market administrator the proof necessary to show that (a) the care and management of all the dairy animals and other resources necessary to produce the entire volume of fluid milk products handled is the personal enterprise of and at the personal risk of such person, and (b) the operation of the distributing plant is the personal enterprise of and at the personal risk of such person. A producer-handler would be required to make such reports of his receipts and utilization as the market administrator deems necessary to verify the status of such person's operation and to facilitate vertification of transactions with other handlers.

Producers proposed to limit producer-handler status to operations of not more than 300 pounds daily. This should not be adopted. No testimony was presented to show that the size of a producer-handler's operation per se, currently or potentially, would provide a cost advantage on Class I milk to such operation, or that such an operation handling more than 300 pounds of milk daily would be a disruptive factor in the market. Moreover, it was not established that exempting those persons handling more than 300 pounds of milk per day would affect adversely the competitive position of regulated handlers or producers. As indicated previously, a producer-handler in relying essentially on his own production to furnish his fluid milk sales must carry his own balancing supplies. In this circumstance, it is concluded that he has no demonstrable advantage either as a producer or a handler.

*Producer.*—Producer should mean any person (except a producer-handler) who produces milk in compliance with the inspection requirements of a duly constituted regulatory agency, whose milk is received at a pool plant, or diverted therefrom under certain conditions to a nonpool plant that is not a producer-handler plant. The producer definition will aid in making the necessary distinction between the production of those dairy farmers whose milk will be priced and pooled each month under the Lake Mead order and the receipts at handlers' plants from all other sources not to be pooled.

"Producer" should not include a dairy farmer whose milk is actually received at a pool plant as diverted milk from an other order plant when Class II or Class III classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another Federal order. Likewise, "producer" should not include the milk of any dairy farmer whose milk is diverted to an other order plant when such dairy farmer is designated as a producer with respect to such milk under the other order. Excluding such dairy farmers from the producer definition will insure inter-order coordination by eliminating the possibility that a dairy farmer will be a producer under two orders with respect to the same milk.

Also, "producer" should not include a dairy farmer whose milk is delivered during the month to a nonpool plant other than as diverted producer milk under the limits provided.

The Lake Mead market is so situated that a dairy farmer in California may be in a position to deliver milk in excess of his State quota to a plant regulated under the Lake Mead order. Proponents suggested that the producer definition exclude a dairy farmer who is a regular supplier for another market. Considering the size of the California market in comparison with the Lake Mead market, it is essential that the order provide safeguards against the influx of milk surplus to California's fluid market needs for temporary periods simply to share in the Class I sales of the Lake Mead market. A basic consideration of the order is that it promote orderly marketing for producers who are regularly associated with the Lake Mead market. Also, the regulation adopted herein provides protection for such producers from the disorderly marketing conditions that otherwise could result from surplus milk associated with the market. It is appropriate that such protection also be afforded from the surplus milk associated with unregulated plants in other markets.

Since the receipts from dairy farmers for other markets at a pool plant can be considered to represent surplus (Class III) production associated with the unregulated plant, such "other source" receipts should be allocated to the Class III classification at the pool plant.

*Producer milk.*—Producer milk is intended to include all milk that should receive the benefit of the minimum uniform price. Accordingly, it should be defined as all skim milk and butterfat contained in Grade A milk received at a pool plant directly from producers and milk of producers qualified under the diversion provisions.

When such milk is not needed in the market for Class I purposes, the movement of it to a nonpool plant for manufacturing purposes should be facilitated. It is necessary, however, to provide limits on the amount of milk that may be diverted in order that only that milk regularly associated with the market will be diverted when it is not needed in the market for Class I purposes.

Producers associated with this market are not expected to produce large quantities of milk in excess of the market's fluid needs. Diversion provisions are provided herein primarily to enable handlers and cooperative associations to divert producer milk on such occasions as weekends and holidays when the milk is not needed in the market for Class I purposes.

Diversion of producer milk to a nonpool plant by a cooperative association should be limited to 30 percent of the producer milk delivered to pool plants (including diverted producer milk) during the months of March through July and 20 percent thereof in the other months. Similarly, a pool plant operator (other than a cooperative association) should be permitted to divert milk of producers not otherwise diverted by a cooperative association, subject to similar diversion limits. Producer proponents proposed these diversion proportions, and they are appropriate in view of the relatively high Class I utilization of the market.

Only that milk regularly associated with the market should be eligible to be diverted to nonpool plants. At least 6 days' production of a producer should be received at a pool plant during the month to qualify any of his production in the same month for diversion. Such requirement is sufficient to establish a producer's association with the fluid market and still permit flexibility in diverting milk not needed for fluid use.

Milk diverted to nonpool plants in excess of the limits provided would not be considered producer milk. Hence, eligibility for pricing and pooling under the order would be forfeited on such excess. In such instances, it is necessary that the diverting handler specify which milk is ineligible as producer milk. If the handler fails to make such designation, thereby making it infeasible for the market administrator to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler would be ineligible as producer milk.

Producer milk diverted should be priced at the location of the plant to which diverted. If such milk were priced at the pool plant from which diverted,

more distant producers would, in effect, be subsidized when their milk is diverted to distant manufacturing plants. This is because such producers would receive the f.o.b. market price as if their milk had actually moved to the market, but on which the transportation cost to the market had not been incurred. Thus, the pool price to all producers is reduced by the difference in prices for the two locations applied to the milk diverted.

*Other source milk.*—An "other source milk" definition should be provided in the Lake Mead order. In addition to milk received from producers, a handler may receive milk or milk products from other sources. The other source milk definition would implement the identification of various categories of receipts at a regulated plant.

Fluid milk products and bulk fluid cream products from any source other than producers, cooperatives acting as handlers on farm bulk tank milk, pool plants and plant inventories at the beginning of the month should be considered as other source milk.

Other source milk also should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the classification plan adopted herein. Although no handler obligation would apply under the order to the receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

All manufactured dairy products from any source (including those produced at the plant) that are reprocessed, converted into, or combined with another product in the plant during the month should be defined as other source milk. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated directly to the handler's Class II utilization and no handler obligation would apply under the order to such receipts.

Other source milk also should include any disappearance of manufactured milk products for which the handler fails to establish a disposition. It is reasonable that each handler be required to account fully for all milk and milk products received or processed at his plant. Otherwise, a handler with inadequate records could have an opportunity to gain a competitive advantage over his competitors who properly account for all milk. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

(b) *The classification and allocation of milk.*—As proposed by producers, the order should provide for three classes of utilization.

The statutory authority for Federal milk orders specifies that an order shall classify milk in accordance with the form in which or the purpose for which the milk is used.

*Class I milk.*—Milk sold in the Lake Mead market for fluid consumption must be produced in compliance with the inspection requirements of various regulatory agencies. This is in contrast to the absence of such requirements on manufactured dairy products sold in the area, such as butter and hard cheese. Because of the extra cost of getting high quality milk produced and delivered to the market for fluid use in the condition and quantities required, it is necessary to establish a separate class for such milk to which a price considerably above the manufacturing milk price may be applied. This higher price must be at a level which, together with the prices applicable to the other classes, will yield a blend price to producers that will encourage the production of enough milk to meet the market's fluid needs.

Accordingly, the Class I classification adopted herein includes, with certain exceptions, those milk products processed for fluid consumption that must be made from inspected milk. Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in the order as a "fluid milk product".

Class I milk should include also any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

Since this decision does not provide an exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain Class III sterilized products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Cooperatives proposed that milkshake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milkshake mixes be in Class II.

Milkshake and ice milk mixes are marketed generally through two channels. Limited quantities of such mixes are processed for home consumption, with such mixes being distributed to consumers through foodstores and on home delivery routes. The major outlet for milkshake and ice milk mixes, though, is the so-called "soft-serve" trade. Mixes processed by regulated handlers for this use are sold to commercial establishments where the product is run through a special freezer and dispensed to the public in a semisoft form.

Milkshake and ice milk mixes are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. Although such shake mixes are intended to be consumed in a semisoft form, or even in a very thick fluid form, they are marketed for essentially the same use as the traditional frozen desserts. This is the case whether such mixes are sold through the "soft-serve" trade or for home use. With minor exception, as noted below, milk used in milkshake and ice milk mixes thus should be classified in the same class as milk used in the traditional frozen desserts. As discussed later in this decision, the classification plan adopted herein includes frozen desserts in Class III.

It is possible that a product very similar in composition and form to chocolate milk could be marketed under the label of a milkshake mix for the purpose of

having a lower classification apply to the product. Since such a product actually would have the same general form and purpose as other fluid milk products now classified as Class I under the order, it should be included in the Class I classification. It is necessary, though, to provide some means of distinguishing between such a product and the general category of milkshake mixes that are being sold in competition with frozen desserts. For this purpose, the total solids content of the product should be used. A standard of 20 percent or more total solids should encompass those milkshake and ice milk mixes intended for use as a type of frozen dessert. Mixes with less solids are similar in composition to chocolate milk and other flavored fluid milk products and should be a Class I product.

Cooperatives, in representing producers, proposed that the amount of a modified fluid milk product that is classified as Class I milk be the actual weight of the modified product rather than the weight of a like unmodified product, as adopted herein and as commonly provided under other Federal orders. Their proposed procedure, relative to that adopted herein, would increase slightly the quantity of a modified product priced in Class I.

The Lake Mead order would provide for the accounting of all nonfat dry milk or condensed skim milk used by a handler on a skim milk equivalent basis. Such products are ordinarily derived from unpriced milk or milk that has been priced as surplus milk under a Federal order. An economic incentive would exist for handlers to substitute, where possible, reconstituted skim milk in Class I products for an equivalent amount of producer skim milk. Full skim milk equivalent accounting is thus necessary in applying the order's classified price plan to such types of other source milk.

Handlers may add concentrated nonfat milk solids to a Class I product to increase the product's palatability. Such modification of the Class I product, in contrast to reconstitution, increases the volume of the product only slightly. Any displacement of producer milk in Class I in this case is limited to this minor increase in the volume of the modified Class I product. Thus, the quantity of a modified fluid milk product to be classified in Class I should be limited to the weight of an equal volume of an unmodified product of the same nature and butterfat content. Any greater amount is unnecessary in protecting the classified price plan for producers.

Fluid milk products should not be defined only on the basis of product composition, as was proposed by cooperatives. Contending that conventional fluid milk product definitions that list products by name do not identify clearly those products intended to be in Class I, cooperatives proposed that a fluid milk product be defined solely in terms of moisture and milk solids content of the product. As proposed by producers, a "fluid milk product" would be any product containing at least 6.5 percent but less than 27 percent nonfat milk solids, less than 9 percent butterfat, and more than 20 percent moisture, all computed on the basis of weight.

In support of their proposal, proponents contended that the listing of products under a fluid milk product definition does not accommodate the proper classification of new products or variations of the listed products when they are introduced on the market. They pointed out that the market administrator would have to make order interpretations in response to this situation. Adoption of their proposed definition, it was contended, would eliminate such problems because any product meeting the specified composition limits for a fluid milk product would be a fluid milk product regardless of the name under which the product might be marketed.

For simplicity, the fluid milk product definition should list the generic names of those products commonly sold for consumption as beverages. The products listed in the definition provided herein encompass most of the forms in which milk for fluid uses is sold. Anyone referring to this fluid milk product definition may easily ascertain, in the case of most milk products, whether a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the composition standards proposed herein would embrace any fluid or frozen milk product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids. The 9 percent butterfat standard coincides with the butterfat percentage provided herein to delineate the mixtures of cream and milk or skim milk to be included in Class II. The total solids and water percentages represent a reasonable measure of the fluidity of those products that normally are consumed as beverages. The 6.5 percent nonfat milk solids standard is used to exclude from the fluid milk product definition those products which contain some milk solids but which are not closely identified with the dairy industry, such as chocolate flavored drinks in "pop" bottles.

These composition standards are provided so as to conform as closely as possible to the water, solids, and butterfat content of those products specifically listed in the fluid milk product definition, i.e., the traditional milk beverages. It is intended that these standards apply only to milk products, and only to such products that are being marketed for consumption in fluid form. Such standards would not be applied to products such as soups, which are not customarily thought of as milk products, or to products that would be a type of frozen dessert marketed for consumption in frozen form.

In determining whether a milk product is covered by the composition standards of the fluid milk product definition, such standards should be applied to the composition of the product in its finished form. A product may be modified by the addition of nonfat milk solids or concentrated through the removal of water. In these cases, the composition standards should be applied to the composition of the product as it is marketed, not to the composition of the product on a skim equivalent basis. Application of the composition standards on the latter basis could result in defining as a fluid milk product a product clearly not intended as a milk beverage. For all other purposes under the order, however, the product should be accounted for on a skim equivalent basis.

The use of composition standards as a means of defining fluid milk products would not deter the development of new milk products. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered.

*Class II milk.*—Class II milk should include all skim milk and butterfat disposed of in the form of eggnog, yogurt, or a "fluid cream product," i.e., cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat. Any product containing 6 percent or more nonmilk fat (or oil) that resembles any of these products likewise should be in this class. Also, eggnog, yogurt, and fluid cream products that are in inventory at the end of the month in packaged form should be in Class II.

Included also in this classification should be skim milk and butterfat used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese. Skim milk disposed of in any Class II product that is modified by the addition of nonfat milk solids should be Class II milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Cooperatives proposed that the Lake Mead order provide for an intermediate classification (Class II). The proposed Class II uses would include cottage cheese, any other cheese containing more than 50 percent moisture, cheese dips, ice cream, frozen desserts, milkshake mixes for further processing in commercial establishments, eggnog, yogurt, evaporated or condensed milk or skim milk, dietary and infant formulas, custards, puddings, pancake mixes, and any prod-

uct with 6 percent or more nonmilk fat (or oil). In addition, Class II also would include mixtures of cream and milk, or skim milk containing 9 percent or more butterfat, cream in plastic, frozen, aerated, or sterilized form, sour cream, sour mixtures, and anhydrous milkfat.

In support of their proposed Class II classification, proponent cooperatives indicated that of the products not included in Class I all but the so-called "hard" products (butter, dried products, and certain hard cheese) should be included in Class II. They stated that these proposed Class II products, unlike the hard products, are less storable and thus produced only in response to current demand. In addition, proponents claimed that handlers in the market normally rely on Grade A milk for the proposed Class II products. Proponents contended that for these reasons producer milk used in such Class II use should be priced at a level somewhat above the price applicable to milk disposed of in the residual Class III uses.

Of the products adopted herein for inclusion in Class II, the one of major importance is cottage cheese. There are several distinguishing characteristics of cottage cheese production that support a higher price for milk in this use than for milk channeled into the residual surplus uses. There is little, if any, relationship between the quantity of cottage cheese made and the amount of reserve milk in the market, as is the case with respect to butter and nonfat dry milk for instance. Unlike such other manufactured products, cottage cheese has more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers generally want adequate supplies of fresh, high-quality producer milk to be available at their plants for cottage cheese use.

Milk used in yogurt should be priced at the Class II price. Yogurt, which is a soft, nonfluid, "spoonable" product, has some of the marketing characteristics of cottage cheese. Although yogurt can be made from cream and nonfat dry milk, processors generally prefer milk. Since yogurt has a relatively limited shelf life, it is made on a continuing basis, thus requiring a regular supply of milk at all times. As in the case of cottage cheese, these conditions warrant that producer milk in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

Class II should not include yogurt flavored frozen desserts. Frozen desserts containing milk cultured with the lactic acid producing bacteria used in yogurt may be marketed in such forms as sherbet mix for the "soft-serve" trade, yogurt cones, and chocolate covered frozen yogurt on a stick. These products compete with other frozen desserts and thus should be classified in the same Class III classification provided herein for such other frozen desserts.

Class II milk also should include eggnog. Although eggnog is prepared for use as a beverage it should not be a Class I product because of competition from imitation products. Eggnog has a relatively high butterfat content and the limited sales of the product are highly seasonal. A substantial portion of the marketings of this type of product is in the form of imitation eggnog. Classification of eggnog in Class II rather than Class I will materially enhance the competitive position of the product in the marketplace.

With the establishment of an intermediate price class under the Lake Mead order, it is appropriate that any "filled" product containing 6 percent or more nonmilk fat (or oil) that resembles the proposed Class II products made with milk fat likewise be included in this class. The substitution of nonmilk fat for milk fat in a product merely changes the composition of the product and not its use. For competitive reasons, a comparable classification of products made with milk fat and their filled counterparts is necessary.

The adopted Class II classification for cream products should enhance their competitive position in the Lake Mead market relative to nondairy substitutes. Cream products sold by Nevada handlers are now priced at the same level as other Grade A fluid products. In recognition of the competitive inroads on cream sales by substitute products, however, cooperatives proposed that milk used in cream products be considered as a Class II use. Provision for this classification in the order will accommodate the desire of dairy farmers with respect to the returns from their milk.

In this connection, it is desirable to define in the order a "fluid cream product." "Fluid cream product" would mean cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

*Class III milk.*—Class III milk should include skim milk and butterfat used to produce cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, plastic cream, frozen cream, anhydrous milkfat, any milk product in dry form, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, custards, puddings, pancake mixes, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, any concentrated milk product in bulk, fluid form, and any product containing 6 percent or more nonmilk fat (other than a Class I product).

Other Class III uses should include fluid milk products and bulk fluid cream products in inventory at the end of the month, and that portion of modified (by the addition of nonfat milk solids) fluid milk products and Class II products not included in Class I or Class II. In addition, Class III should include any fluid milk product or product listed in the Class II classification that is disposed of for animal feed, or is dumped if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition. Also, shrinkage within certain limits should be classified as Class III milk.

The adopted Class III classification includes several uses for milk that cooperatives included in their proposed Class II classification. As discussed below, a higher price should not apply to such uses.

Frozen desserts (including commercial milkshake and ice milk mixes), dietary and infant formulas, custards, puddings, pancake mixes, candy, soups, and other food products are made in varying degrees from concentrated forms of milk. Condensed milk or skim milk, nonfat dry milk, dry buttermilk, dry whey, butter, plastic cream, or frozen cream, for example, may be used, often interchangeably or in combination, in the processing of such products. Because of processing techniques and product formulations, milk in its whole, fluid form does not lend itself to the processing of these various manufactured products. Thus, a milk plant operator or other food processor using producer milk in such products first would have to concentrate the milk before making the finished product. Moreover, such products are relatively storable and can be made in the flush milk production months for sale during the low production months.

When the cost of converting producer milk into a concentrated "intermediate" product is considered, such milk priced 15 cents over the Minnesota-Wisconsin price, the Class II price adopted herein, would not be competitive with concentrated dairy products from other sources. Such concentrated products need not be made from Grade A milk. In addition, handlers could use dried products made from producer milk priced under the Lake Mead order. As provided herein, milk used to produce such dried products would be priced at the Minnesota-Wisconsin price.

Condensed milk or skim milk, plastic cream, frozen cream, and anhydrous milkfat are "intermediate" products that also should be included in the lowest classification. These products are normally used in making other products, primarily frozen desserts and food products such as candy. Under the classification plan adopted herein, frozen desserts and food products are Class III uses for milk. Accordingly, producer milk used in the several intermediate products likewise should be priced at the Class III level.

A Class III classification for producer milk used in evaporated milk will permit this use to remain as a competitive outlet for milk surplus to the needs of the Class I market. Evaporated milk must compete in a national market with evaporated milk processed from another graded or ungraded milk that is often priced at no more than the Minnesota-Wisconsin price.

All cheese products other than cottage cheese, lowfat cottage cheese or dry curd

cottage cheese should be included in Class III. No distinction should be made for classification purposes between "hard" cheeses containing varying amounts of moisture. Although the cooperatives' proposed order provisions made such a distinction (hard cheese containing 50 percent or more moisture would be a Class II product), proponents did not provide any economic justification for such classification. It cannot be concluded from this record that producer milk used in "high" moisture hard cheese would have any significantly greater value to regulated handlers than milk used in cheese with a lesser moisture content.

*Classification of shrinkage.*—The Lake Mead order should contain provisions for classifying skim milk and butterfat in shrinkage.

Basically, the shrinkage provisions adopted herein are similar to the shrinkage provisions now provided in most Federal milk orders.

The commonly used method of prorating total plant shrinkage to (1) those kinds of receipts on which the shrinkage limitations apply, and (2) other receipts, principally other source milk in the form of fluid milk products requested for Class II or Class III use, is provided herein. To the extent that the quantity of shrinkage prorated to the first category exceeds the established limit, the excess would be classified in Class I.

The shrinkage provisions provided herein recognize that shrinkage normally varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to delivery of milk by a cooperative association handler from farms to plants in tank trucks, a Class III shrinkage allowance of 0.5 percent of such milk is provided. Any excess shrinkage over 0.5 percent is classified as Class I milk.

The Class III shrinkage allowance to the processing plant receiving the milk from the cooperative would be 1.5 percent. This maintains a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The provisions adopted herein are designed to carry out the appropriate division of shrinkage whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if he buys the milk on the basis of weights determined at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for the cooperative association delivering the milk.

As provided herein, when a plant operator disposes of bulk milk by transfer to another plant, his shrinkage allowance would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to another plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This is the same procedure applicable to cooperative bulk tank deliveries to pool plants when similar handling is involved.

This kind of division of the 2 percent shrinkage allowance, both in the case of transfers from cooperatives to plants and for transfers between plants, has been found practical and has been well accepted in Federal order markets where it now applies.

Shrinkage should be accounted for on an individual plant basis under the Lake Mead order. Such procedure would promote plant efficiency in the Lake Mead market.

*Classification of milk transferred or diverted to other plants.*—Some fluid milk products or fluid cream products may be disposed of to other plants. It is necessary, therefore, to provide specific rules so that the classification of such movements may be determined under this order.

Under the classification plan provided herein, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk form from a pool plant to another plant be classified in a manner similar to that used in classifying transfers of bulk fluid milk products.

Some skim milk or butterfat may be transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant. Such transfers should be classified as Class I milk unless both handlers request the same classification in another class in their monthly reports to the market administrator and sufficient Class II or Class III utilization is available at the transferee-plant after the allocation of its receipts of other source milk. If the shipping plant received other source milk in the form of nonfat dry milk, for example, during the month, the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to the other source milk. If the shipping handler received other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee-plant.

The provisions governing transfers between pool plants described herein will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utilization (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Skim milk or butterfat may be transferred or diverted from a pool plant to an other order plant in the form of a fluid milk product or transferred from a pool plant to another order plant in the form of a bulk fluid cream product. The classification of such transfers or diversions shall apply only to the skim milk and butterfat in excess of any receipts at the pool plant from the other order plant.

The Lake Mead order should provide for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the Lake Mead market.

Fluid milk products transferred or diverted to other order plants and bulk fluid cream products transferred to such plants will be classified in accordance with the classes to which such milk is allocated under the other order. If information concerning the classification of transfers and diversions is not available to the market administrator in time to compute handler pool obligations, such transfers shall be classified in Class I, subject to adjustments when the information is available. In addition, the order should provide that if the other order provides for a different number of classes than the Lake Mead order, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified in Class I and skim milk and butterfat allocated to other classes shall be classified as Class III milk. The order also provides that if a fluid milk product is transferred to an other order plant and such product is not defined as a fluid milk product under the other order, classification of such transfer shall be in accordance with the classification provisions of this order.

The order should prescribe a method for classifying the skim milk and butterfat in transfers from a pool plant to a producer-handler. If such skim milk and butterfat is in the form of a fluid milk

product, such transfers should be classified as Class I milk. As described elsewhere in this decision, such a classification is necessary to assure that producers are not burdened with maintaining reserve supplies associated with the Class I sales of producer-handlers.

Skim milk and butterfat in the form of bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

The order also must prescribe a procedure for classifying transfers or diversions to a nonpool plant that is not an other order plant or a producer-handler plant. Bulk fluid milk products transferred or diverted and bulk fluid cream products transferred should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes his books and records available to the market administrator for the purpose of verifying the receipts and utilization of milk and milk products in the nonpool plant. To determine such lower classification, the nonpool plant's utilization must be assigned to its receipts of milk from various sources.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the Lake Mead marketing area, and any transfers of packaged fluid milk products from the nonpool plant to Lake Mead pool plants, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under the Lake Mead order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under the Lake Mead order and, second, to any such remaining receipts from plants fully regulated under other orders.

Any remaining unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

*Allocation of receipts to utilization.*—Because the value of producer milk is based on its classification, the Lake Mead order must provide a procedure for assigning a handler's receipts from different sources to his utilization for the purpose of establishing such classification.

The system of allocating handlers' receipts to the various classes should be basically the same as that adopted in the decision issued June 19, 1964, for 76 milk orders integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. Official notice was taken of that decision at the hearing (29 FR 9002). That decision provides a procedure for allocating over a handler's total utilization his receipts from all nonpool sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Producers testified that the method developed for all Federal milk marketing orders as a result of the June 19, 1964, decision is appropriate in the Lake Mead marketing area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants so as to coordinate the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area.

Cooperatives proposed that all other source milk (fluid and nonfluid) be allocated to Class III, regardless of how such milk actually is used. Under this procedure, producers who are relied upon to furnish a regular supply of milk for the local fluid market receive the highest possible classification of their milk.

The Lake Mead order should provide that handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products be permitted to have such other source milk allocated directly to their Class II uses. Under the classification plan provided herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

As pointed out elsewhere in this decision, the establishment of an intermediate class is supported by the fact that handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use

class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in the proposed Class II products. Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation of a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle in his plant any receipts of fluid other source milk with his receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating that he actually used fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk to Class III.

It should be noted that the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

The attached order provides that for purposes of allocating a multiple-plant handler's receipts to his utilization the operations at each of his pool plants shall be considered separately. In accordance with the "compensatory payment" decision referred to earlier, however, certain receipts of milk from unregulated supply plants and other Federal order plants are to share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of his pool plants combined. The order therefore provides a procedure whereby the milk from unregulated supply plants and other order plants is classified on the basis of the handler's total system, but is assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of his entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of his other pool plants in his system. This technique does not result, however, in changing the amount of milk to be accounted for at each plant, or the classification of milk within the handler's entire system.

Proponent cooperatives contended that receipts should be allocated to utilization on a product pound basis rather than on a skim milk and butterfat basis as provided under most other Federal milk orders. Producers stated that with a single butterfat differential applicable to all classes there is no need to allocate butterfat separately to the various classes. This decision provides a different value for butterfat used in Class I than for butterfat used in Class II or Class III. Therefore, the Lake Mead order must provide that the accounting be done on a skim milk and butterfat basis.

*Classification of end-of-month inventory.*—The Lake Mead order should provide for the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Ending inventory of fluid cream products, eggnog and yogurt, when held in bulk form, likewise should be classified in Class III. Such products held in packaged form at the end of the month should be classified as Class II milk.

Inventories classified in Class III should be subject in the following month to reclassification in a higher class, as determined through the allocation of a handler's receipts to his utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory.

Because of the regulatory treatment being accorded certain other source milk, it is necessary that fluid cream products, yogurt and eggnog on hand in packaged form at the end of the month be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the next month, would be allocated in such month directly to the handler's Class II utilization.

For the first month the order is in effect, a slightly different classification of inventory must apply. Beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new order, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply in the following month if a higher classification results.

(c) *Class prices.*—In order to promote and maintain orderly marketing conditions for the Lake Mead market, minimum class prices for producer milk must, under section 608c(18) of the act, be established at levels that reflect economic conditions affecting the market supply and demand for milk, and tend to maintain a supply of milk sufficient to meet the fluid needs of the market plus a reserve to provide for daily fluctuations in demand.

The Class I price must not be so high as to attract unneeded supplies to the market. If it were, it would tend to result in unnecessary surplus. On the other hand, the price should be sufficiently high to encourage the production of the quantity of high quality milk required for the fluid needs of the market plus an adequate reserve.

The Class II price should be high enough above the manufacturing price to compensate producers for a least a part of the cost of delivering sufficient Grade A milk to meet the needs of handlers for cream, cottage cheese, and related items for which Grade A milk is used.

The Class III price must be fixed at a level that will insure a market for milk produced in excess of the Class I and Class II requirements of the market, but high enough to discourage association with the pool of additional Grade A milk simply for use in manufactured dairy products.

Class prices, as well as uniform prices to producers, should be computed and

announced on a 3.5 percent butterfat content basis. This will conform to prevailing practice in the market.

*Class I priced.*—For an 18-month period beginning with the effective date of the order, the Class I price should be computed each month by adding $1.60 to the basic formula price (Minnesota-Wisconsin manufacturing milk price for the second preceding month). For the purpose of computing Class I prices, however, the basic formula price should be not less than $4.33. This will insure that the present basic formula price (floor price) in other Federal order markets will be the same in this market.

The price for milk used for fluid purposes in the marketing area has a direct relationship to the price paid for milk used for manufacturing purposes. The basic formula price used in determining the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. The differential over manufacturing milk prices is necessary to cover the added cost of meeting quality requirements in the production of milk for fluid uses and the cost of moving it to the market. Dairy farmers must have incentive, over the price of milk for manufacturing uses, to produce and deliver an adequate supply of quality milk to meet the market's demand for milk in fluid form.

Proponent cooperatives proposed the Minnesota-Wisconsin manufacturing milk price as the basic formula price. This price is an average of prices paid at a large number of manufacturing plants in the two States. Plant operators report the total pounds of manufacturing grade milk received from dairy farmers, the total butterfat content, and the total dollars paid to dairy farmers for such milk, f.o.b. plant. These prices are reported on a current month basis and the Minnesota-Wisconsin price is announced for each month on or before the fifth day of the following month. The Minnesota-Wisconsin price is the basic formula price in all other Federal order markets also, including the Central Arizona and nearest federally regulated markets to the Lake Mead area.

This price for raw milk delivered by farmers is determined by competitive conditions and reflects general economic conditions affecting the supply and demand of milk for manufactured milk products marketed through a highly coordinated marketing system, which is national in scale.

As previously stated, the basic formula price would be the Minnesota-Wisconsin pay price for the month second preceding that to which the Class I price applies. On the fifth day of each month, the market administrator would announce publicly the Class I price for the following month. This procedure is now used in Federal orders generally.

Producer proponents proposed the formula adopted. At the time of the hearing (October 1972) this would have yielded a Class I price of $6.67 per hundredweight for milk containing 3.5 percent butterfat content and for April 1973 a Class I price of $7.05. This compares with a Class I price of $6.48 established by the Nevada Dairy Commission for milk (of 3.5 percent butterfat content) produced in Nevada and used as Class I milk in the southern Nevada (Las Vegas) market in October 1972. Official notice is taken that the latter price is still in effect.

Proponents contended that their proposed Class I price is necessary to reflect supply and demand conditions for milk in the Lake Mead area and to assure the market of a sufficient supply of pure and wholesome milk.

Local conditions of supply and demand for fluid milk in southern Nevada, a principal segment of the designated marketing area, are affected by the fact that the Nevada Dairy Commission, which regulates the handling of Nevada milk in the southern Nevada area, is unable to price out of State supplies. While a major concern of such regulation is to maintain orderly marketing conditions for fluid milk distributed in the southern Nevada (Las Vegas) market, the jurisdiction of the Commission does not reach to supplies from other States.

During 1970, about 83 million pounds of milk were used in the southern Nevada market. Only 65 percent of this was accounted for by Nevada production. For 1971, about 63 percent of the milk supply for the Las Vegas area was furnished by Nevada dairy farmers. Nevada producers supplied 54.9 million pounds of milk to the market in 1970, and 52.5 million pounds in 1971. Additional supplies for the market have come primarily from Utah producers, who, along with Nevada producers, pointed to unsatisfactory prices and the absence of an overall plan for distributing returns to all producers as the basis for this proceeding.

The market is a relatively "tight" market in terms of supply in relation to the need for fluid milk. For 1971, 89 percent of the milk under the jurisdiction of the Nevada Dairy Commission in this market was used in fluid milk products (Class I). Utah milk in the market was said to have been paid for on an 80–20 basis, with 80 percent of the milk supplied being used in Class I. On this basis, overall market Class I utilization in 1971 was about 86 percent of the total receipts of producer milk. The remaining 14 percent that was used in Class II and Class III represented the reserve supply for the market, most of which is used for cottage cheese and ice cream.

For purposes of insuring an adequate supply to the Lake Mead market, the Class I price applicable at Los Angeles, Calif., is relevant. The main alternative supply area for the Lake Mead market is situated between Los Angeles and Las Vegas. Much of the milk supply produced there is assembled in the Bakersfield, Calif., area, and can move readily either to Los Angeles or Las Vegas as the relative prices dictate.

A hearing was held by the State of California authorities in Sacramento, Calif., on January 3, 1973. Following that hearing the California minimum price for the Southern Metropolitan area (Los Angeles) was set, effective February 1, 1973, at $6.77 per hundredweight for Class I milk testing 3.5 percent butterfat. Official notice of that hearing and decision is taken at this time because such price affects the value of milk produced in the Bakersfield area, which is significant to consideration of the price needed in the Lake Mead market to insure an adequate supply.

The Los Angeles Class I price applicable at Bakersfield is $6.57 ($6.77 minus $0.20). Bakersfield is 286 miles from Las Vegas. At a hauling rate of 1.5 cents per 10 miles (equivalent to the location adjustment discussed elsewhere herein) it would cost about 43 cents to transport milk to Las Vegas from the Bakersfield area. For April 1973, the Lake Mead Class I price adjusted for the Bakersfield location would be $6.62 ($7.05 minus $0.43), only 5 cents more than the Los Angeles price for that location. Thus, if production of local producers falls short, the Lake Mead market still will be in a position to obtain alternative supplies without greatly increased cost.

The Class I price level currently provided for the southern Nevada market, and the lack of uniform application of prices to all handlers in the market have resulted in unrest among both Nevada producers and Utah producers who initiated this proceeding. Continuance of the present price situation, particularly in the face of the recent California Class I price increase, would not provide assurance of an adequate supply for the Lake Mead market. It is concluded that the Class I price level provided herein is needed to insure an adequate supply of milk for fluid use in the Lake Mead area.

Producers' proposal would limit the Lake Mead Class I price to not more than $7.22 per hundredweight during the first 18 months the order is effective. Such limit was intended to reflect the Los Angeles Class I price plus a hauling allowance to the Las Vegas area. As previously stated, the Class I price formula provided herein would have resulted in a price of $7.05 for Class I milk for April, or 17 cents under the limit proposed by producers. However, the Lake Mead Class I price differential will be effective only for the first 18 months in which the order is fully effective. It is appropriate that the Class I price structure be reexamined at a public hearing for possible adjustment after the accumulation of data relative to milk supplies and sales. Accordingly, a "ceiling" on the Class I price is not required. In any event, if an earlier reconsideration of the price level is deemed appropriate, a hearing is the proper forum. Therefore, the proposal for the proposed ceiling price is denied.

*Class III price.*—The Class III price should be the basic formula price for the month, as proposed by producer proponents.

As proposed by proponents, and as stated earlier in this decision, the Lake Mead order should provide two classes of utilization for milk not needed for

Class I purposes. Before discussing the pricing of milk in the intermediate class (Class II), consideration will be given to the Class III price because the level of such price bears on the appropriate Class II price level.

Reserve milk disposed of in manufactured product uses should be priced at a level to result in orderly disposition of all excess supplies, but yet to maximize returns to producers from the values obtained in manufactured product disposition. Establishment of a price too high to clear the market of milk excess to fluid requirements would interfere with the orderly marketing of milk and encourage the use of other, more distant sources of milk, instead of producer supplies. Fixing a price too low would encourage handlers to associate additional supplies with the market simply to obtain low cost milk for manufacturing uses.

It is the returns from all classes of milk that provide farmers the incentive to produce the needed milk supplies. Consequently, to the extent that the price for reserve milk in the market contributes less than its full market value to producers' returns, the other class prices must be higher than otherwise necessary to make up the difference. Accordingly, it is appropriate that the reserve milk supplies be priced at the highest practicable level consistent with the orderly disposal of the milk.

The Minnesota-Wisconsin price meets the aforesaid conditions for pricing Class III milk. It is an average of prices being paid farmers by processors of butter, nonfat dry milk, and cheese who are meeting the competitive test of the unregulated marketplace. Use of the Minnesota-Wisconsin pay price series not only maintains a reasonably consistent basis of pricing surplus milk among the federally regulated market, but also achieves price parity between regulated and unregulated plants engaged in a similar enterprise since it provides the regulated manufacturer essentially the same margin for processing as is experienced in the unregulated market. Such price is widely used as a surplus price determinant under many Federal milk orders, such as the Great Basin market, which is located in this general region.

At the hearing, the witness for proponent cooperatives stated that the Class III price, like the Class I price, should be established as an interim price, for the first 18 months the order is effective. Proponents contended that an 18-month-trial period, is necessary because a decision on pricing surplus milk under 40 Federal milk marketing orders is pending.

Since the Class III price proposed herein will reflect the value of milk being disposed of for manufacturing in open competitive markets, there is no purpose to be served in adopting the limit proposed by proponents. Should the need arise to reconsider a different basis for pricing Class III milk, hearing procedure is the appropriate forum for this purpose.

The Lake Mead market is characterized by a relatively high Class I utilization. It is anticipated that Class III utilization may be very minor, and concentrated in ice cream and cheese manufacture. Both of these products yield relatively high returns compared to butter and nonfat dry milk.

Class III disposition for the market that is used in hard cheese will probably be manufactured at a cheese plant at Beaver, Utah. Cheese produced at this location is sold in competition with cheese produced in other sections of the country. Ice cream is manufactured in some of the Las Vegas plants that would be pool plants. The Class III price should reflect the value of milk for these higher-valued dispositions.

Under the regulations of the Nevada Dairy Commission, the February 1973 price applicable to milk used in Class III in the southern Nevada marketing area was $4.86. During the same month, milk used to manufacture cheese, butter, and nonfat dry milk was priced at $5.25, and milk used in ice cream was $5.85, in the Los Angeles market. Also, manufactured products, such as hard cheese priced on the basis of the Minnesota-Wisconsin price ($5.45 for February) under the Great Basin order, compete in this general region. Thus, the value of milk used in competing manufactured products is considerably higher than the price established for such uses in the Las Vegas area. It is concluded that the higher price provided herein will assure that producers supplying the Lake Mead market will receive the full value of their milk when utilized in Class III.

*Class II price.*—The price for Class II milk should be the basic fofmula price for the month, plus 15 cents. During 1972, this price would have averaged $5.23. The Class II price provided herein, which was proposed by proponents, will obtain for producers some extra return for producer milk used in Class II products above its value in other manufactured dairy products.

A principal outlet for Class II milk in the Lake Mead market is cottage cheese, which is frequently produced in conjunction with fluid milk packaging operations. The producers supply Grade A milk for use in cottage cheese in the southern Nevada market perform a service by delivering such high quality milk to handlers' plants on a regular and continuing basis as required by the handlers. On such basis, there is some additional value for milk supplied to handlers for use in cottage cheese at distributing pool plants. Such value should be reflected in returns to producers.

The Class II price provided herein is not at such level, however, that will induce handlers to substitute alternative supplies for producer milk in this outlet. If producer milk for cottage cheese use were not available, the cost of procuring equivalent milk ingredients from outside sources would be higher than if obtained from local producers. Milk used to produce cottage cheese is priced in Class II under the California State regulation. The price applicable to such milk in the Los Angeles market for February 1973 was 5.83. This compares with a price of 5.60 that would have been applicable to such milk under the Lake Mead order.

*Location adjustments.*—The order should provide for location adjustments. Such adjustments are the amounts by which the Class I price and the uniform price for milk are reduced for milk received at plants located some distance from the major consumption center of the market.

As provided herein, no location adjustment would apply to plants situated within 40 miles of the Clark County Courthouse in Las Vegas. A location adjustment based on 1.5 cents per 10 miles or fraction thereof would apply on milk received at plants located more than 40 miles from such courthouse. The applicable distance for determining location adjustments would be measured by the shortest hard-surfaced highway, as determined by the market administrator.

Producer proponents proposed the location adjustment provisions provided herein, except that their proposal called for a location adjustment of −10c/cwt for any plant located more than 40 miles but not more than 50 miles from such courthouse.

Provision for location adjustments is an integral part of pricing milk under Federal milk orders. The adjustments recognize differences in the economic value of milk for fluid processing in the market when it is received at distant plants and then shipped to plants at the market center as compared to being originally received from farmers at the latter plants.

While St. George and Cedar City are included within the defined marketing area, Las Vegas is the major market center for milk processing and distribution. The former localities are at distances of 125 and 176 miles from Las Vegas. The great bulk of the urban population in the Lake Mead marketing area is located within a radius of 40 miles of the Clark County (Nev.) Courthouse.

Fluid milk, being bulky and perishable, incurs a relatively high transportation cost. When milk for this market is received from the farm at a plant located a considerable distance from Las Vegas, the handler rather than the producer incurs the additional cost of moving that milk from the outlying plant to Las Vegas, where most of the supply is processed. Under these conditions, and in the absence of a higher-priced alternative market for the producer, the economic value of producer milk delivered to a plant located at a distance from Las Vegas is reduced in proportion to the distance therefrom and the cost of transporting such milk from the plant of first receipt to the plant at the market center. Location adjustments also reflect the lesser value (place utility) of the producer's milk when it is diverted from the farm to an outlying plant for manufacture in lieu of being brought to the market center.

Location adjustments assist further in carrying out the statutory requirement of uniformity in prices to all handlers since, by their application, all handlers purchase their Class I milk at the same minimum price f.o.b. the market center. The handler buying in this manner thus owns his milk under the order at the same minimum Class I price f.o.b. market as the handler receiving milk from an outlying plant. Since location adjustments apply only to plant locations, no adjustment is applicable when the milk is received directly from the farm at the processing plant at the market center. The transportation, or hauling, cost to the market on the latter milk is paid for by the individual producer.

Adjustments to the producer blend price are made at the same rate as are the adjustments to the price for Class I milk. This provides an equitable means of distributing among producers the proceeds from the sale of their milk delivered to plants located at varying distances since to be eligible for Class I (fluid) use in the market, the milk must be transported in fluid form whether moved at the expense of the handler or producer.

In the Lake Mead market, location adjustments would apply to existing plants at Logandale, Nev.; and St. George, and Cedar City, Utah. The specific adjustments would approximate —9 cents, —19.5 cents and —27 cents, respectively, at these locations. Although these plants are distributing plants, location adjustments would apply to such plants as well as to supply plants. The value of the milk is determined by the location of the plant rather than by the type of plant it is.

Producers proposed that a location adjustment of —10 cents apply at locations over 40 miles but not more than 50 miles from the Clark County Courthouse. There are no substantial grounds for which to adopt a 40–50-mile zone with a 10-cent adjustment. Also, it is not apparent that any plant would be situated in the zone if it were provided. All location adjustments would be computed on a mileage basis from the courthouse basing point. A rate of 1.5 cents per 10 miles is appropriate to reflect the cost of hauling milk efficiently in bulk tank lots. It is recognized as a representative rate for transporting milk and is the rate most applicable in Federal orders throughout the United States. Except as referred to above (40–50-mile zone), no other rate was proposed.

Proponents proposed that in applying location adjustments, the applicable Lake Mead Class I and uniform prices should not be reduced so as to result in lower prices for milk received at any California plant than that provided by the California Bureau of Milk Stabilization. However, the Class I price provided herein adjusted for location is deemed to be appropriate for insuring an adequate supply of milk for this market without causing unnecessary disruption to supplies for other markets. The rate of location adjustment is reasonable for the efficient transportation of milk in bulk form. It would not be appropriate therefore to limit the application of the adjustment as proposed by proponent. The proposal, therefore, is denied.

To insure that milk will not be moved unnecessarily at producer's expense, the order should contain a provision to limit the quantity of milk transferred between plants that may be eligible for the location adjustment credit. It is therefore provided that, for the purpose of calculating location credit, fluid milk products received from another pool plant shall be assigned to any Class I milk at the transferee plant that is in excess of the sum of produce milk receipts at such plant, receipts from other order plants, and receipts from unregulated supply plants, that are assigned to Class I. Such assignments would be made first to receipts from plants at which no location adjustment is applicable and then in sequence beginning with receipts from the plant with the lowest location adjustment. This sequential assignment of milk will tend to discourage the unnecessary movement of milk between pool plants for other than Class I purposes at the expense of producers, and will provide an equitable basis for facilitating the movement of milk between pool plants for Class I purposes.

*Butterfat differential.*—The Class I butterfat differential (for each one-tenth of 1 percent butterfat) should be 0.120 times the wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter at Chicago, as reported by the Department during the preceding month and rounded to the nearest 10th of a cent, and the Class II and Class III differentials should both be 0.115 times such butter price for the current month.

Based on the February 92-score Chicago butter price, the March 1973 Class I butterfat differential (at 0.120 times the Chicago butter price) would have been 8.1 cents and the butterfat differential for Class II and Class III milk (at 0.115 times such butter price) would have been 7.8 cents.

Proponent cooperatives proposed a single butterfat differential at 0.125 times the Chicago Grade A (92 score) butter price. A witness for proponent cooperatives testified that the present Class I butterfat differential under the regulations of the Nevada Dairy Commission (10 cents for each one-tenth of 1 percent butterfat) should not be adopted in view of the declining consumer acceptance of butterfat in the market place.

In recent years in the southern Nevada market the proportion of solids-not-fat in most of the fluid milk products (in Class I) has increased, and the proportion of butterfat has decreased. This has been evidenced by increasing sales of low-fat milk items while sales of whole milk generally have been declining. During the fourth quarter of 1969 the average butterfat content of milk used in Class I in the southern Nevada marketing area, as reported by the State authorities, averaged 3.48 percent compared with 3.37 percent for the same quarter of 1970, and 3.13 percent for the fourth quarter of 1971. During 1970, the average butterfat content of milk used in the southern Nevada market was 3.35 percent. The market's average butterfat percentage for milk used in Class I dropped in 1971 to 3.22 percent.

This is in line with the national trend toward a declining proportion of butterfat in Class I sales, as reflected by Federal order marketing areas. In 1966 the average butterfat test in Federal order markets for Class I milk was 3.5 percent.[1] This percentage has declined from year to year since, and in 1971 the comparable average butterfat test was 3.21 percent, or 9 percent from 1966 to 1971.

The Class I butterfat differential provided herein, at 0.120 rather than 0.125 times the butter price, is appropriate to improve the competitive position of butterfat in the marketplace. Considering the limited manufacturing facilities in the Lake Mead market, it will provide handlers an incentive to maintain or perhaps, even increase, the butterfat content of their bottled milk products, as an alternative to locating a surplus outlet for such butterfat.

At present, under the regulations of Nevada Dairy Commission, the Class II and Class III butterfat differential for the southern Nevada marketing area are determined by multiplying the 92-score Chicago butter price by 0.115. Hence, the butterfat differentials for Class II and Class III milk provided herein will be the same as those now prevailing for pricing much of the butterfat used in such classes in the southern Nevada market. The butterfat differentials for Class II and Class III milk provided herein will place the same value on butterfat in these two nonfluid classes as is placed on butterfat used in the surplus class under the Great Basin order.

The price a producer receives for butterfat must be closely related to the value of butterfat in the marketplace. This is determined by what handlers can return from the sale of products made from this component of milk. The butterfat differential used in making payments to producers should be computed at the average of the return actually received from the sale of butterfat in producer milk. The rate to be used for this purpose would be the average Class I, Class II, and Class III butterfat differentials weighted by the proportion of butterfat in producer milk classified in each class. Thus, producer returns for butterfat will reflect the average value of their butterfat in the use-classes provided herein. This weighted average method is currently used to pay producers for the butterfat in their milk deliveries in the southern Nevada market.

*Use of equivalent prices.*—If for any reason a price or pricing constituent needed by the market administrator in administering the order is not available

[1] Official notice is taken of the January 1972 Summary of Federal Milk Order Statistics (issued by the Dairy Division, AMS, USDA), p. 4.

as prescribed by the order, the market administrator is authorized herein to use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required. Including such provision in the order will leave no uncertainty with respect to the procedure to be followed in the absence of any price or pricing constituent customarily used and thereby will prevent interruption in the operation of the order.

(d) *Distribution of the proceeds to producers.*—Marketwide pooling of producer returns should be provided in the order as the means of distributing among producers the proceeds from the sale of their milk. Such pooling method will assure each producer supplying the market a proportionate share of the market's total Class I sales.

The facilities in the various plants in the area for handling producer milk in excess of that needed for Class I purposes vary considerably. While a number of plants in the market are primarily Class I operations and handle little or no surplus milk, others utilize varying proportions of their supplies for Class II items or for manufacturing purposes. Under these conditions, a marketwide pool will facilitate the marketing of producer milk since the type of facilities at the plant will not be a determining factor in the price the plant can pay its producers compared to other plants.

A marketwide pool also will make it possible for producer associations to divert any weekly or seasonal reserves of milk and still keep producers on the market who are needed to fulfill the year-round requirements of the market. It will assist further in apportioning among all producers the lower returns from reserve milk manufactured when otherwise this burden would vary by individual groups of producers.

A marketwide pool thereby will contribute to market stability and the maintenance of an adequate and dependable supply of producer milk at reasonable prices.

*Producer-settlement fund.*—The market administrator should maintain a producer-settlement fund in which are deposited all moneys paid by handlers in accordance with order terms for milk received, and out of which are paid all moneys due producers and cooperative associations for their milk.

The producer-settlement fund is the mechanism for carrying out the provisions requiring payments to producers on a uniform basis. It is the temporary depository for moneys paid for milk by the handler each month and the source of funds distributed by the market administrator to producers and cooperatives in payment for their milk at the minimum uniform price.

The unobligated balance in the fund is cleared each month except for a small working reserve held for efficient operation of the fund. This is necessary to provide for such contingencies as making payment to a handler from the fund by reason of an audit adjustment. The reserve, which would be operated as a revolving fund and adjusted each month, is established in the attached order at not less than 4 nor more than 5c/cwt of producer milk in the pool for the month.

Any payments received by the market administrator from any partially regulated handler would be deposited in the producer-settlement fund as well as payments made by fully regulated handlers. Money thus deposited would be included in the uniform price computation and thereby be distributed to producers.

*Payments to producers and cooperative associations.*—Payments to producers and cooperative associations at the minimum uniform price for milk deliveries should be made by the market administrator.

This plan of payment was proposed by producers and no objections were raised at the hearing or in briefs.

Under the pooling and payment plan adopted herein, each handler would be required to make a partial payment to the market administrator (producer-settlement fund) for producer milk received during the first 15 days of the month at a rate per hundredweight equal to the Class III price for the preceding month. Such payment would be due by the 25th day of the same month. The market administrator, in turn, would distribute these partial payments by the last day of the same month to producers who do not receive their payments through a cooperative association.

Provision should be made for a cooperative association to receive payment for producers' milk it causes to be delivered to a pool plant or diverts. Receiving payment for milk marketed, with the opportunity to reblend proceeds where the sale of members' milk is involved, will promote orderly marketing and will assist a cooperative in discharging its responsibilities to members and to the market.

The statute provides that cooperatives may receive moneys for milk marketed by them to handlers and permits the reblending among members of the returns from their milk. Membership contracts normally authorize a cooperative to collect for member producer deliveries. Therefore, the market administrator, if requested by an authorized cooperative, would pay it an amount equal to the sum of the individual payments otherwise payable to the producers for whom it markets.

Payments to a cooperative association on milk marketed through it would be made by the market administrator 2 days earlier, thus enabling producers who market through a cooperative to receive payment on the same day that other producers receive their payment.

Final payment by the handler to the market administrator for all producer milk received during the month would be required by the 14th of the following month. Final payments for the month would be made by the market administrator to cooperatives by the 17th day of the following month following the month of delivery, and to the individual producers who do not receive their payments through a cooperative, by the 19th of the following month.

The various dates proposed herein for making final payments for producer milk will result in producers receiving the returns from their milk deliveries as soon as feasible after the submission of handler reports and the computation of the uniform price. Reports of receipts and utilization for the previous month, essential to the uniform price computation, would be required of handlers by the seventh day of the month. The market administrator would be required to announce the uniform price by the 12th day of the month. These particular dates are reasonably spaced to provide time after the end of the month for handlers to prepare and submit their reports, for the market administrator to process such reports and compute the uniform price, and for the collection of payments from handlers based on billings issued by the market administrator.

Handlers' final monthly payments to the market administrator would be subject, of course, to any proper deductions authorized in writing by the individual producer. For example, it is not unusual for the producer to make legitimate purchases of supplies and materials through his handler for which he has an obligation to pay. Hauling also is a regular service to the producer, reimbursement for which is properly deductible from payments due the producer, whether performed by the handler or by common carrier. Allowable deductions normally would be made by the handler from his pool obligation and would be taken into account by the market administrator in making payments from the producer-settlement fund on a uniform basis to producers and cooperative associations.

A particular problem concerning the propriety of hauling deductions from producer payments was raised at the hearing.

A producer spokesman testified that 70 c/cwt has been deducted from his milk check for the past several years for the haul of his milk to a Las Vegas plant located about 126 miles from his farm. The producer testified that he considered such rate, assessed by the handler purchasing his milk, to be excessive, but has acquiesced to it because under the arrangement he has with the handler the handler's purchase of his milk is dependent upon the condition that the handler will perform the hauling services.

While the propriety of the rate testified to is not demonstrated on the record, a basic question is raised by the producer, i.e., whether any hauling deduction from a producer's payment that is not clearly in the nature of reasonable reimbursement for services performed on behalf of the producer in connection with the production or delivery of his milk jeopardizes the integrity of the minimum uniform price plan, an essential feature of a regulation that is designed to provide orderly marketing conditions for

producers by establishing minimum uniform prices for their milk.

A handler may not be allowed, of course, either directly or through any affiliate or subsidiary, to gain a competitive advantage over other handlers by circumventing the minimum price provisions of the order. To refer again to the testimony of hauling rates, a handler could gain such an advantage by having the producer authorize on the handler's behalf a hauling rate in excess of what is a reasonable rate under the prevailing conditions. Otherwise, the possibility would exist that the handler not only could avoid the full class price obligation placed on him by the regulatory program, but also could deprive producers of the minimum uniform price they are guaranteed by the program. Such an arrangement tends also to discourage competitive hauling practices for the market.

Failure to prevent a circumvention of the minimum price provisions could result in continuation in one of the conditions that led to this hearing proceeding, i.e., payment by handlers of different prices for milk received from producers with competitive advantage in milk procurement cost for some handlers, with some producers bearing the brunt of prices not fully reflective of the value of their milk delivered to plants serving this market. The integrity of the minimum price provisions of the order could be jeopardized and statutory objectives defeated. Any deduction that thwarts the statutory goals obviously would not be properly made.

It is not inconceivable that a handler attempting to gain a pricing advantage could arrange with his producers to rebate to him from such producer's uniform price payment, moneys in excess of reasonable value for the service or the actual deductions therefor. Such subterfuge would have the identical effect of an excessive hauling deduction per se and should be treated as such by the market administrator.

Since the order specifically provides for appropriate hauling deductions when properly authorized by the producer, it is reasonable to presume that the handler's acceptance of a rebate from the producer would have as its purpose the hiding of the true nature of the transaction involved. Any such transaction not disclosed by the handler's reports or records should be considered as an attempt to violate the order.

It is well established that not less than the minimum uniform price required by the order must be paid to producers, and that any device that results in the producers receiving less than such uniform price is unlawful, even if authorized or acquiesced in by the producer. Thus, a producer may not waive his right to receive the minimum uniform price established by the order by making it possible for a handler to recover in any form any part of the minimum price payment due the producer. To allow such a waiver of the minimum price requirements of the order by the producer in favor of the handler would be as destructive to the purposes of the act as an unreasonable charge by the handler in consideration of the service performed by him for the producer.

It is appropriate, therefore, to assure individual producers of equitable charges for hauling service arranged or performed by the handler on the producer's behalf, to provide that: (1) The handler shall substantiate in advance, to the satisfaction of the market administrator, that the charge assessed a producer is appropriate under the conditions existing with respect to the particular load of milk and other conditions relative to the hauling of milk for the market, and (2) the handler shall give notice, simultaneously to all producers to be affected thereby, and in advance of the effective date, of any change in the hauling charge.

Each such charge, of course, must be authorized in writing by the individual producer. Prevailing charges for hauling and changes therein shall be publicly announced by the market administrator.

The record discloses the possibility that the amount of the hauling charge may be influenced by other arrangements between the handler and the producer for the sale of the producer's milk. For this reason the order should provide further that the arrangement under which the handler hauls milk for the producer shall be independent of other terms of sale for such milk.

The general provisions of the Lake Mead order provide for the maintenance of records by each handler relevant to order transactions and obligations involving the handler under the order. To carry out the above requirements with respect to hauling reimbursement to handlers from producer payments, it is provided further that any handler, whether directly or through an affiliate or subsidiary, engaged in hauling producer milk in the Lake Mead market shall retain, or be responsible for making available from such affiliate or subsidiary, for examination by the market administrator at his request, certain records with respect to such milk movements as specified in the order.

Two other proposals dealing with possible problems concerning deductions for hauling were before the hearing. One would provide for maximum rates that could be charged producers for hauling their milk from farm to plant. A spokesman for producers suggested, however, that if such method were adopted, the market administrator should be authorized to develop the rates through formal rulemaking procedure rather than by incorporation of a specific schedule of maximum rates in the order.

The second proposal would limit hauling deductions to an amount not exceeding prevailing rates charged by a common carrier engaged in the same class of service.

The evidence in the hearing record provides inadequate basis for adoption of the latter proposals, which were presented by proponents as possible alternatives to their original proposal (§ 1139.80 of their proposed order) concerning proper deductions authorized by producers.

(e) *Administrative provisions.—Charges on overdue accounts.*—The Lake Mead order should provide a rate of three-fourths of 1 percent per month on any unpaid obligation due the market administrator for deposit in the producer-settlement fund.

Proponent cooperatives proposed a rate of 1 percent per month. A witness for proponent testified that such a charge on overdue accounts is needed to encourage prompt payment.

A charge on overdue accounts should be provided in the Lake Mead order to encourage prompt payment of handler obligations. It is essential that all handler payments to the producer-settlement fund be made promptly in order that the market administrator will be able to make the required payments to producers. Handlers who pay late are, in effect, borrowing money from producers through the producer-settlement fund. Money borrowed is worth a reasonable rate of interest. However, the charge applied to overdue accounts is not a substitute for prompt payment as required by the order.

Proponent cited varving interest rates associated with credit transactions in the Las Vegas area. Consumer credit accounts generally charge at the rate of 1½ percent per month (18 percent on an annual basis). Area banks charge their prime customers at the rate of about 7.5 percent annually. When they are made, such loans are secured. However, bank loans at the prime rate are not general. Accordingly, the rate charged on overdue accounts under the order that are already past due and are not secured should be somewhat higher than the prime rate.

There should be no opportunity for a handler to achieve financial advantage by delaying payments of obligations to the market administrator. Accordingly, the Lake Mead order should provide a carrying charge on overdue obligations of fully regulated handlers to the market administrator for deposit into the producer-settlement fund, including any adjustment resulting from audit by the market administrator of a handler's receipts and utilization. The charge should apply also to the overdue obligations (to the producer-settlement fund) of partially regulated handlers, including audit adjustments. The rate provided herein at three-quarters of 1 percent is reasonable in view of rates generally prevailing in the region and will tend to preclude such situations from occurring.

*Marketing services.*—Provisions should be made in the order for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator and the cost should be borne by producers for whom the services are rendered. Any cooperative association, if approved for

such activity by the Secretary, may perform such services for its producers and if it is doing so, the service will not be furnished to such producers by the market administrator. The act specifically authorizes marketing services provisions of the nature provided herein.

There is a need for a marketing service program in connection with the administration of a Federal milk order for the Lake Mead area. The weighing and testing of the milk of all producers is closely related to the main provisions of the order, which are the classification and pricing provisions. The latter provisions are the basis of the computation of the minimum uniform price payable to producers.

The Lake Mead order, like other Federal milk orders, would contain provisions requiring all regulated handlers to submit to the market administrator each month a report showing the total quantity of skim milk and butterfat received from producers, and his utilization of such skim milk and butterfat in the three price classifications provided. From such report the market administrator computes the handler's pool obligation by multiplying the quantity of milk in each use class by the applicable class price. The uniform price is derived by totaling the obligation of all regulated handlers and dividing the sum by the total quantity of milk delivered by all producers. This is the price payable to each producer subject only to adjustments for the butterfat test of the individual producer's milk and for the location of the plant to which his milk was delivered.

To verify that a handler has reported his receipts and disposition correctly and to insure that each producer receives proper payment for his deliveries, the market administrator audits each handler's operation. The quantity of skim milk and butterfat received by a handler must balance, of course, with the quantities of skim milk and butterfat in the products processed and disposed by him. This requires the availability of the weight and butterfat test of each producer's deliveries. The provisions provided herein for weighing and testing provide the further guarantee to all producers that each of them is properly paid on the basis of a check of an impartial agency, and that one producer is not receiving a part of his payment at the expense of other producers through inaccurate weights or test. It is not apparent from the testimony provided that any agency is now regularly verifying the weights and tests of producer milk.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to other provisions of the order. There are no payments to other persons on such milk. Hence, there is no need to provide the same marketing services as are provided other producers.

The other service provided, that of furnishing market information, is designed to keep the producer informed of developments that might affect his price or market outlet in order that he may better evaluate his marketing situation and that of producers generally. The objective of the program is to aid producers to achieve and maintain orderly marketing conditions for their milk.

In the case of producers who market their milk through a cooperative association, the act authorizes such cooperative to perform these marketing services, and the costs of these services normally are borne by such producers through membership dues.

Proponent cooperative associations proposed that 12c/cwt be provided in the order as a marketing services deduction. However, no specific testimony was introduced to show that the 12-cent rate is needed.

It is concluded that in the absence of such information, a rate of 7c/cwt should be provided. This represents the maximum rate established in any Federal order, regardless of market size. It is anticipated that such maximum rate will cover the costs that are likely to be incurred by the market administrator in providing the services specified for the 10 percent of the producers supplying the market who will receive the services by this means. If experience indicates that marketing services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

*Expense of administration.*—Each handler should be required to pay to the market administrator, as his proportionate share of the cost of administering the order, 4¢/cwt, or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to class I (except milk so assessed under another Federal order).

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The act provides that such cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers and on other source milk allocated to class I milk.

The proposed order provides that a cooperative shall be the handler on milk it delivers in tank trucks from the farms to pool plant of other handlers. The cooperative is the handler on such milk basically for the purpose of making payments to its individual producers. For all accounting purposes, however, the milk would be considered as producer milk at the plant of the receiving handler. It therefore would be treated the same as any other direct receipts from producers.

The market administrator must verify by audit the receipts and utilization at pool plants, whether the plant operator buys his milk directly from producers or through a cooperative as a bulk tank handler. It is appropriate, therefore, that the pool plant operator receiving such milk pay the administrative assessment on it on the same basis that he pays such assessment for all other producer milk received at his plant. No plant of the cooperative is involved in this particular circumstance. The cooperative, therefore would be liable only for the administrative assessment on any amount by which the farm weights of the producer milk exceed the aggregate weight on which the plant operator purchases the milk from the cooperative.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) make specified payments (discussed elsewhere in this decision) into the producer-settlement fund on route disposition in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of his receipts from dairy farmers computed as though such plant were a fully regulated plant.

The market administrator, in administering an order as it applies to such nonpool route distributor, must incur expenses in essentially the same manner as in applying the order to pool handlers. However, the order is not applicable to such distributor to the same extent as to regulated handlers. Hence, payment of the administrative assessment on his in-area sales would reasonably constitute his pro rata share of the administrative expense.

In the case of unregulated milk that enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at his plant are subject to verification by the market administrator. Hence, it is appropriate that the regulated handler be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to prevent duplication, an assessment should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

*General provisions.*—The Lake Mead order proposed herein incorporates, by reference, certain terms, definitions, and administrative provisions that are included in part 1000. The provisions are

common to all Federal milk orders, having been so adopted effective July 1, 1971 (36 FR 9844).

The first section (§ 1000.1) states that the uniform provisions included in part 1000 shall be a part of each Federal milk marketing order as if set forth in full in each order, except in any order where any such provision is expressly defined or modified otherwise.

The second section (§ 1000.2) includes definitions of five general terms used in all Federal milk orders: Act, order, department, secretary, and person.

The third section (§ 1000.3) deals with the designation, powers, and duties of the market administrator.

The fourth section (§ 1000.4) pertains to the continuity and separability of provisions in an individual order. For the most part these are internal administrative rules and instructions to Department employees regarding procedures involved in the suspension, termination, or liquidation of any or all provisions of a Federal milk order.

The fifth section (§ 1000.5) describes a handler's responsibility with respect to records and facilities.

The final section (§ 1000.6) relates to the termination of obligations.

The standard provisions of part 1000 have the same intent and purpose in each Federal milk order, and they have worked effectively since the adoption of part 1000 in July 1971 for all Federal orders. Adopting part 1000 by reference for the Lake Mead order will promote uniform application of these provisions, which have the same intent and purpose in all orders.

A detailed discussion of the need and basis for incorporating the general provisions in each order is contained in a decision issued by the Assistant Secretary on April 15, 1971 (36 FR 7514). The findings and conclusions thereof are made a part hereof by reference as the basis for adopting the same provisions in the Lake Mead order.

### Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

### General Findings

(a) The proposed marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

### Recommended Marketing Agreement and Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the proposed order. The following order regulating the handling of milk in the Lake Mead marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

## PART 1139—MILK IN LAKE MEAD MARKETING AREA

### Subpart—Order Regulating Handling

#### General Provisions

Sec.
1139.1 General provisions.

#### Definitions

1139.2 Lake Mead marketing area.
1139.3 Route disposition.
1139.4 [Reserved]
1139.5 Distributing plant.
1139.6 Supply plant.
1139.7 Pool plant.
1139.8 Nonpool plant.
1139.9 Handler.
1139.10 Producer-handler.
1139.11 [Reserved]
1139.12 Producer.
1139.13 Producer milk.
1139.14 Other source milk.
1139.15 Fluid milk product.
1139.16 Fluid cream product.
1139.17 Filled milk.
1139.18 Cooperative association.

#### Handler Reports

1139.30 Reports of receipts and utilization.
1139.31 Payroll reports.
1139.32 Other reports.

#### Classification of Milk

1139.40 Classes of utilization.
1139.41 Shrinkage.
1139.42 Classification of transfers and diversions.
1139.43 General classification rules.
1139.44 Classification of producer milk.
1139.45 Market administrator's reports and announcements concerning classification.

#### Class Prices

1139.50 Class prices.
1139.51 Basic formula price.
1139.52 Plant location adjustments for handlers.
1139.53 Announcement of class prices and handler butterfat differentials.
1139.54 Equivalent price.
1139.55 Handler butterfat differentials.

#### Uniform Price

Sec.
1139.60 Handler's value of milk for computing uniform price.
1139.61 Computation of uniform price.
1139.62 Announcement of uniform price and producer butterfat differential.

#### Payments for Milk

1139.70 Producer-settlement fund.
1139.71 Payments to the producer-settlement fund.
1139.72 [Reserved]
1139.73 Payments to producers and to cooperative associations.
1139.74 Producer butterfat differential.
1139.75 Plant location adjustments for producers and on nonpool milk.
1139.76 Payments by handler operating a partially regulated distributing plant.
1139.77, Adjustment of accounts.
1139.78 Charges on overdue accounts.

#### Administrative Assessment and Marketing Service Deduction

1139.85 Assessment for order administration.
1139.86 Deduction for marketing services.

#### General Provisions

### § 1139.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

#### Definitions

### § 1139.2 Lake Mead marketing area.

"Lake Mead marketing area," hereinafter called the "marketing area," means all territory geographically within the boundaries listed in paragraphs (a) and (b) of this section, including all territory occupied by government (municipal, county, State, or Federal) reservations, installations, institutions, or other establishments. Where such an establishment is partly within and partly without such territory, the marketing area shall include the entire establishment:

(a) In Clark County, Nev., the Nellis Air Force Base and the following incorporated and unincorporated places:

Henderson City in Henderson Township.
In Las Vegas Township:
East Las Vegas.
Las Vegas City.
Paradise.
Sunrise Manor (part).
Vegas Creek.
Winchester.
Boulder City in Nelson Township.
In North Las Vegas Township:
Nellis.
North Las Vegas City.
Sunrise Manor (part).

(b) In the State of Utah, Cedar City in Iron County and St. George in Washington County.

### § 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point, by a vendor, from a plant store or through a vending machine) except a delivery to another plant.

§ 1139.4 [Reserved]

§ 1139.5 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1139.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

§ 1139.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that during the month has:

(1) Route disposition, except filled milk, representing not less than 50 percent of its total receipts of Grade A fluid milk products (including milk diverted from such plant to a nonpool plant pursuant to § 1139.13); and

(2) Route disposition, except filled milk, in the marketing area representing not less than 10 percent of such receipts.

(b) A supply plant from which during the month not less than 50 percent of its Grade A milk receipts from dairy farmers (including milk diverted from such plant to a nonpool plant pursuant to § 1139.13) is transferred to a pool distributing plant pursuant to paragraph (a) of this section as fluid milk products, except filled milk. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any such month is filed by the plant operator with the market administrator prior to the first day of any such month. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of the March-through-July period unless it fulfills the transferring requirement of this paragraph for such month.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of as route disposition during the month in such other Federal marketing area than was disposed of as route disposition in this marketing area, except if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order on the basis of route disposition in such other marketing area, and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in this marketing area than is disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section that also meets the pool plant requirements of another Federal order and from which greater qualifying transfers are made during the month to plants regulated under such other order than are made to plants regulated under this order, except during the months of March through July if the transfers to the other order plant are for surplus disposition and the operator of the supply plant elects to retain automatic pooling under this part; or

(5) A distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of in the marketing area during the month.

§ 1139.8 Nonpool plant.

"Nonpool plant" means any milk, or filled milk, receiving, manufacturing, or processing plant other than a pool plant. This definition shall include, but not be limited to, the following categories of plants:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the act.

(c) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant defined in § 1139.7(c)(5).

§ 1139.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of its producers that is diverted pursuant to § 1139.13 for the account of the cooperative association;

(c) Any cooperative association with respect to milk of its producers that is received at the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any person defined as a producer-handler;

(f) Any person in his capacity as the operator of an other order plant described in § 1139.7(c);

(g) Any person in his capacity as the operator of an unregulated supply plant; and

(h) Any person in his capacity as the operator of an exempt distributing plant.

§ 1139.10 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives fluid milk products only from:

(1) His own dairy farm production; and

(2) Pool plants or other order plants (by transfer) in an amount that is not in excess of the lesser of 5 percent of his Class I utilization during the month or 5,000 pounds;

(c) Does not reprocess or convert milk products into fluid milk products except to increase the nonfat milk solids content above that of the fluid milk products received; and

(d) Provides proof satisfactory to the market administrator that:

(1) The care and management of the dairy animals and other resources necessary to produce the entire amount of milk handled (other than that received from regulated plants) is the personal enterprise of and at the personal risk of such person; and

(2) The management and operation of such distributing plant is the personal enterprise of and at the personal risk of such person.

§ 1139.11 [Reserved]

§ 1139.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person:

(1) Who produces milk in compliance with the Grade A milk inspection requirements of a duly constituted regulatory agency; and

(2) Whose milk is received at a pool plant or diverted from a pool plant to a nonpool plant that is not a producer-handler plant within the limits set forth in § 1139.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the act;

(2) Any person with respect to milk produced by him diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1139.44(a)(8)(iii) and the corresponding step of § 1139.44(b);

(3) Any person with respect to milk produced by him diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk; and

(4) Any person whose milk is received during the month at a nonpool plant except by diversion from a pool plant.

**§ 1139.13 Producer milk.**

"Producer milk" means the skim milk and butterfat in milk of a producer which is:

(a) With respect to a handler described in § 1139.9(a):

(1) Received at his pool plant directly from the producer;

(2) Received at his pool plant from a handler described in § 1139.9(c); and

(3) Diverted for his account from his pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in paragraph (d) of this section;

(b) With respect to a handler described in § 1139.9(b), diverted for such handler's account from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in paragraph (d) of this section; and

(c) With respect to a handler described in § 1139.9(c), received by the handler from the producer's farm in excess of the producer's milk that is received at pool plants pursuant to paragraph (a)(2) of this section. Such producer milk of the handler shall be deemed to have been received by the handler at the location of the pool plant to which the milk was delivered.

(d) The following conditions shall apply to milk of a producer diverted from a pool plant to a nonpool plant that is not a producer-handler plant:

(1) Such milk shall be priced at the location of the nonpool plant to which the milk is diverted.

(2) A cooperative association may divert for its account the milk of any producer (other than producer milk diverted pursuant to paragraph (d)(3) of this section) from whom at least 6 days' production of milk is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March through July and 20 percent in other months of the producer milk which the association causes to be delivered to pool plants, or diverted therefrom during the month.

(3) The operator of a pool plant (other than a cooperative association) may divert for his account the milk of any producer (other than producer milk diverted pursuant to paragraph (d)(2) of this section) from whom at least 6 days' production of milk is received during the month at his pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March through July and 20 percent in other months of the milk received at or diverted from such pool plant from producers and for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler during the month shall not duplicate milk diverted pursuant to paragraph (d)(2) of this section;

(4) Diversions in excess of such percentages shall not be producer milk, and the diverting handler shall designate the dairy farmers whose milk is not producer milk. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

**§ 1139.14 Other source milk.**

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1139.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1139.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1139.40(b)(1)) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1139.40(b)(1)) from which the handler fails to establish a disposition.

**§ 1139.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1139.40(b) or (c)(1) (i) through (viii) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

**§ 1139.16 Fluid cream product.**

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1139.17 Filled milk.**

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1139.18 Cooperative association.**

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

HANDLER REPORTS

**§ 1139.30 Reports of receipts and utilization.**

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on the forms prescribed by the market administrator, the following information for such month:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1139.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1139.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1139.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1139.31 Payroll reports.**

(a) On or before the eighth day after the end of each month, each handler described in § 1139.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer for such month:

(1) His name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producer;

(4) The average butterfat content of such milk;

(5) The identity of producers for whom the cooperative association is authorized to collect payment pursuant to § 1139.73; and

(6) The amount and nature of any deductions authorized in writing by the producer to be made from payments due such producer for milk delivered.

(b) On or before the 21st day of each month, each handler described in § 1139.9 (a), (b), and (c) shall report to the market administrator, in detail and on forms prescribed by him, the name and address of each producer from whom milk was received during the first 15 days of such month, and the total pounds of milk so received during said period from such producer.

(c) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1139.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 1139.32 Other reports.**

In addition to the reports required pursuant to §§ 1139.30 and 1139.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

**§ 1139.40 Classes of utilization.**

Except as provided in § 1139.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1139.30 shall be classified as follows:

(a) Class I milk.—Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.*—Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

(c) *Class III milk.*—Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b) (1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in paragraphs (b) or (c) (1) (i) through (viii) of this section;

(2) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b) (1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b) (1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1139.41(a) to the receipts specified in § 1139.41(a) (2) and in shrinkage specified in § 1139.41 (b) and (c).

**§ 1139.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1139.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (b) (1) of such section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1139.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1139.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and the butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from

other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1139.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1139.42 Classification of transfers and diversions.**

(a) *Transfers to pool plants.*—Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computation pursuant to § 1139.44(a)(12) and the corresponding step of § 1139.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1139.44(a)(7) or the corresponding step of § 1139.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1139.44(a)(11) or (12) or the corresponding steps of § 1139.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.*—Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is povided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1139.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants.*—Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.*—Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the transferor-handler or diverter-handler so requests and the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1139.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second pant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

**§ 1139.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1139.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1139.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1139.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1139.40, 1139.41, and 1139.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1139.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

**§ 1139.44 Classification of producer milk.**

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1139.9(a) for each of his pool plants separately and of each handler described in § 1139.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1139.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a) (7) (vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1139.40(c) (6)), any product specified in § 1139.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and packaged inventory at the beginning of the month of products specified in § 1139.40(b) (1) that were not subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of milk from a dairy farmer pursuant to § 1139.12 (b) (4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III;

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7) (v), and (8) (i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class

I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1139.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1139.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section;

(i) Subject to the provisions of paragraph (a)(12)(ii) and (iii) of this section; such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1139.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to either paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1139.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b).

**§ 1139.45 Market administrator's reports and announcements concerning classification.**

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1139.44(a)(12) and the corresponding step of § 1139.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1139.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to another order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association that so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be pro rated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

**§ 1139.50 Class prices.**

Subject to the provisions of §§ 1139.52 and 1139.55, the class prices for the

month per hundredweight of milk shall be as follows:

(a) *Class I price.*—For the first 18 months this order is effective, the Class I price shall be the basic formula price for the second preceding month plus $1.60.

(b) *Class II price.*—The Class II price shall be the basic formula price for the month plus 15 cents.

(c) *Class III price.*—The class III price shall be the basic formula price for the month.

**§ 1139.51 Basic formula price.**

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

**§ 1139.52 Plant location adjustments for handlers.**

(a) For producer milk received at a plant located more than 40 miles, by shortest highway distance, as determined by the market administrator, from the county courthouse in Las Vegas, Nev., and classified as Class I milk, subject to the limitation set forth in paragraph (b) of this section, the Class I price specified in § 1139.50(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located from such courthouse.

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

(c) The Class I price applicable to other source milk shall be adjusted at the rate set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1139.53 Announcement of class prices and handler butterfat differentials.**

The market administrator shall announce publicly on or before the fifth day of each month:

(a) The Class I price for the following month;

(b) The Class I butterfat differential for the current month; and

(c) The Class II and Class III prices and the corresponding butterfat differentials, all for the preceding month.

**§ 1139.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

**§ 1139.55 Handler butterfat differentials.**

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1139.50 shall be increased or decreased, respectively, for each one-tenth of 1 percent of butterfat by the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.*—Multiply the butter price specified in § 1139.51 for the preceding month by 0.120.

(b) *Class II and Class III milk.*—Multiply the butter price specified in § 1139.51 for the month by 0.115.

UNIFORM PRICE

**§ 1139.60 Handler's value of milk for computing uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1139.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1139.44 by the applicable class prices (adjusted pursuant to §§ 1139.52 and 1139.55) and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b) by the applicable class prices;

(c) Add the amounts computed pursuant to paragraph (c) (1) and (2) of this section:

(1) Multiply the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b);

(2) Multiply the difference between the Class III price for the preceding month and the Class II price for the current month by the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b);

(d) Add the amount obtained by multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (i) through (iv) and (vii) and the corresponding step of § 1139.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained by multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (v) and (vi) and the corresponding step of § 1139.44(b); and

(f) Add the amount obtained by multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(11) and the corresponding step of § 1139.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

**§ 1139.61 Computation of uniform price.**

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1139.60 for all handlers who filed reports prescribed by § 1139.30 for the month and who made the payments pursuant to § 1139.71 for the preceding month;

(b) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1139.74 and multiplying the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the location adjustments computed pursuant to § 1139.75;

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1139.60(f); and

(f) Subtract not less than 4 cents nor more than 5 c/cwt. The result shall be the "uniform price."

**§ 1139.62 Announcement of uniform price and producer butterfat differential.**

On or before the 12th day after the end of each month the market administrator shall announce publicly the uniform price and producer butterfat differential for such month.

PAYMENTS FOR MILK

**§ 1139.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1139.71, 1139.76, and 1193.77 and out of which he shall make the appropriate payments pursuant to §§ 1139.73 and 1139.77. Payments due to a person from the fund shall be offset by payments due to the fund from such person.

**§ 1139.71 Payments to the producer-settlement fund.**

(a) On or before the 25th day of the month, each handler shall pay to the market administrator for deposit into the producer-settlement fund an amount detremined by multiplying the hundredweight of producer milk received by him during the first 15 days of such month by the Class III price for the preceding month.

(b) On or before the 14th day after the end of the month, each handler shall pay the market administrator an amount equal to his net pool obligation computed pursuant to § 1139.60, less:

(1) Payments made pursuant to paragraph (a) of this section for such month;

(2) An amount computed by multiplying the uniform price applicable at the location of plants from which other source milk is received by the hundredweight of other source milk for which a value is computed pursuant to § 1139.60 (f); and

(3) Proper deductions, charges, or other reimbursement in favor of the handler authorized in writing by producers from whom such handler received milk:

(c) On or before the 25th day after the end of the month, each handler operating a plant subject to the classification and pricing provisions of another order which provides for individual-handler pooling, shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (c) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

**§ 1139.72 [Reserved]**

**§ 1139.73 Payments to producers and to cooperative associations.**

(a) On or before the last day of each month, the market administrator shall make payment, subject to paragraph (c) of this section, to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments have been received pursuant to § 1139.71(a) at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 19th day after the end of each month, the market administrator shall make payment, subject to paragraph (c) of this section, to each producer for milk received from such producer during the month by handlers from whom the appropriate payments have been received pursuant to § 1139.71(b) at the uniform price per hundredweight as adjusted pursuant to §§ 1139.74 and 1139.75, less:

(1) Payments made pursuant to paragraph (a) of this section for such month;

(2) Deductions for marketing services pursuant to § 1139.86;

(3) Other proper deductions (as to purpose and amount) authorized by such producer in writing. As the basis for deductions or other reimbursement to handlers for hauling milk of producers, each handler shall file in advance with the market administrator, in the manner prescribed by him, his rates or charges for hauling and shall substantiate to the satisfaction of the market administrator that the amount to be assessed each producer therefor is reasonable under the hauling conditions existing for the particular load and other conditions relative to the hauling of milk for the market. The handler then shall obtain, in advance of its effective date, on forms provided by the market administrator, written authorization from each producer for the charge. Such procedure shall apply also in the case of any proposed change in hauling charge by the handler. No contractual arrangement between a handler and a producer for supplying milk to the handler shall be contingent on the hauling of such milk by the handler or his affiliate or subsidiary. Prevailing hauling charges and changes therein shall be publicly announced by the market administrator.

(4) For purposes of paragraph (b) (3) of this section, each handler who owns or operates, either directly or through an affiliate or subsidiary person (including interlocking officers or directors), any mobile vehicle used during the month for transporting producer milk en route from the farm of any producer to a pool plant or to a nonpool plant, or from the plant of any cooperative association to the plant of a handler, including his own plant, shall keep, or be responsible for making available from any such affiliate or subsidiary, for examination by the market administrator at his request, records that shall show:

(i) The date, time, source, and quantity of each load of such milk transported by any mobile vehicle so owned or operated by such handler, affiliate, or subsidiary together with the date, time, and quantity of all such milk delivered from such vehicle, and the location and identification of the milk plant or other facility to which delivery or disposition was made; and

(ii) The amount of any charge, and of any and all money or other reimbursement in any manner received by such handler, affiliate, or subsidiary from the producer in connection with the hauling of each such load of milk.

(5) Adjustments in calculating payments to such individual producer for the past months;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay on or before the second day prior to the date specified in such paragraph to each cooperative association for all producers who market their milk through the cooperative association and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section;

(d) If the market administrator does not receive the full payment required of a handler pursuant to § 1139.71, he shall reduce uniformly per hundredweight his payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete the payments to producers on or before the next date for making final payments pursuant to this section following the date on which the remaining payment is received from such handler; and

(e) If the unobligated balance in the producer-settlement fund is insufficient to make all payments pursuant to this section except those payments due producers as described in paragraph (d) of this section, the market administrator shall reduce uniformly per hundredweight his payments to producers and shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the funds become available.

**§ 1139.74 Producer butterfat differential.**

The uniform price for producer milk shall be increased or decreased for each one-tenth percent that the butterfat content of the milk is above or below 3.5 percent, respectively, at the rate determined as follows:

(a) Compute the percentage of the total butterfat in producer milk assigned to each class pursuant to § 1139.44;

(b) Multiply each such percentage by the butterfat differential for the respective class pursuant to § 1139.55; and

(c) Add into one total the values obtained in paragraph (b) of this section, rounding the result to the nearest one-tenth cent.

**§ 1139.75 Plant location adjustments for producers and on nonpool milk.**

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1139.52, and the uniform price for producer milk diverted to a nonpool plant shall be adjusted according to the location of such nonpool plant at the rates set forth in § 1139.52.

(b) In computing obligations applicable to other source milk, the uniform price shall be adjusted at the rate set forth in § 1139.52 applicable at the location of the nonpool plant from which the other source milk was received, except that the adjusted price shall not be less than the Class III price.

**§ 1139.76 Payments by handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1139.30(b) and 1139.31(c) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant § 1139.60 for such handler shall include, in lieu of the value of other source milk specified in § 1139.60(f) less the value of such other source milk specified in § 1139.71(b)(2), a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1139.30(b) and 1139.31(c) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1139.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

**§ 1139.77 Adjustment of accounts.**

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

**§ 1139.78 Charges on overdue accounts.**

Any unpaid obligation pursuant to §§ 1139.71, 1139.76, and 1139.77 shall be increased 1 percent each month beginning with the third day following the date such obligation was payable under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have

been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

**§ 1139.85 Assessment for order administration.**

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4c/cwt or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1139.44(a) (7) and (11) and the corresponding steps of § 1139.44(b), except such other source milk that is excluded from the computations pursuant to § 1139.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1139.76(a)(2).

**§ 1139.86 Deduction for marketing services.**

(a) The market administrator, in making payments to each producer pursuant to § 1139.73, shall deduct 7c/cwt, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler's own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

(b) The moneys deducted pursuant to paragraph (a) of this section shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

Signed at Washington, D.C., on April 24, 1973.

JOHN C. BLUM,
*Deputy Administrator,*
*Regulatory Programs.*

[FR Doc.73-8333 Filed 5-2-73;8:45 am]